IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

APO/248/2016

WITH

WPO/2662/1996

IA NO: GA/2/2021

THE CALCUTTA MUNICIPAL CORPORATION & ORS.

VS

THE CRICKET ASSOCIATION OF BENGAL & ORS.

BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE KAUSIK CHANDA

For Appellants	**:**	**Mr. Alak Kr. Ghosh, Adv.**
		Mr. Swapan Kr. Debnath, Adv.
		Ms. Sima Chakraborty, Adv.
For UOI		**Ms. Susmita Saha Dutta, Adv.**
For Respondent no. 1 (CAB)	**:**	**Mr. Jaydip Kar, Sr. Adv.**
		Mr. Samrat Sen, Sr. Adv.
		Mr. Kaushik Mandal, Adv.
CAV on	**:**	**05.03.2025**
Judgment on	**:**	**19.06.2025**

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated April 24, 2015, whereby the writ petition of the respondent no. 1 herein being WP No. 2662 of 1996, was allowed by a learned Judge of this Court.

2. The material facts of the case are that Cricket Association of Bengal (in short 'CAB') enjoys a lease of the Eden Gardens ground in the city of Kolkata. The owner of the property and the lessor is the Ministry of Defence, Government of India.

3. The inaugural ceremony of the Wills World Cup of 1996 was organized by CAB at the Eden Gardens on February 11, 1996. Thereafter, a Semifinal match of the World Cup was held at the said Cricket ground on March 13, 1996. Certain advertisements had been put up both inside and outside the Eden Gardens Stadium. The Kolkata Municipal Corporation (in short KMC) issued a demand notice dated March 27, 1996, claiming a sum of Rs. 51,18,450/- from CAB on account of advertisement tax for the aforesaid two days of the Wills World Cup, by invoking Section 204 of the KMC Act, 1980.

4. CAB and its president and secretary challenged such demand notice by filing the instant writ petition. The challenge was based on three grounds. Firstly, the concerned advertisements had been displayed within the Eden Gardens Stadium which is not a public place and the same were not visible to the public from a public street or a public place. Therefore, the provisions of Section 204 of the KMC Act, 1980 as it stood before amendment in 2019, did not apply. Secondly, the demand notice suffered from the vice of arbitrariness and had been issued in breach of the principles of natural justice. The basis for the amount claimed in the demand notice had not been disclosed. The writ petitioners had not been granted an opportunity of being heard prior to the issuance of the notice. Thirdly, in view of Article 285 of the Constitution of India, the Union of India

being the owner of the land which houses the Eden Gardens Stadium, the KMC authority cannot levy any tax thereon.

5. Learned Single Judge upheld the grounds of challenge as put forth by the writ petitioners and quashed the demand notice dated March 27, 1996. Being aggrieved, KMC and its officers have come up in appeal.

6. Before recording the respective arguments of the parties, we may note the provisions of Section 204 of the KMC Act, 1980 prior to its amendment in 2019 and Article 285 of the Constitution of India, which read as follows:-

> "**204. Tax on advertisements.**
>
> (1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post, kiosk or structure any advertisement or, displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematograph) shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rate as the Corporation may determine by regulations or as the budget estimate shall state under sub-section (3) of Section 131:
>
> Provided that a surcharge not exceeding fifty per cent of the applicable rate may be imposed on any advertisement on display in temporary fairs, exhibitions, sports events or cultural or social programmes.
>
> (2) Notwithstanding the provisions of sub-section (1), no tax shall be levied under this Sections on any advertisement which:

(a) relates to "non-Commercial advertisement" or "advertisement related to public interest" as defined in the Explanation to sub-Section (4) of Section 2002; or

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

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

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

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

(f) relates to any activity of the Government or the Corporation.

(3) The tax on any advertisement leviable under this section shall be payable in advance in such number of instalments and in such manner as the Corporation may by regulations determine or as the budget estimate shall state under sub-section (3) of Section 131:

Provided that the Corporation may under the terms and conditions of the licence under Section 203 require the licensee

to collect and pay to the Corporation, subject to a deduction of five per cent to be kept by him as collection charges, the amount of tax in respect of such advertisements as are displayed on any site for which he is the licensee."

Article 285 of the Indian Constitution - Exemption of property of the Union from State taxation

(1)The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2)Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

Argument of the appellants

7. While assailing the judgment of the learned Single Judge, Mr. Ghosh, learned Senior Counsel representing the appellants, formulated 5 points for consideration:-

a) Whether or not the Eden Gardens ground and/or Stadium is a public place?

b) Whether or not the advertisements put up at the Eden Gardens were visible to the public from a public place and/or public street?

c) Whether KMC was entitled to impose advertisement tax on CAB by invoking Section 204 of the KMC Act, 1980?

d) Whether the area where the Stadium and/or Eden Gardens is situated, is outside the purview of the KMC Act, 1980?

(e) Whether or not the demand notice under challenge suffers from the vice of arbitrariness or has been issued in breach of the principles of natural justice?

8. Mr. Ghosh submitted that it is true that entry to the Eden Gardens Stadium is restricted to the number of seats available there. However, several other persons/officials remain at the Eden Gardens during the sports events, for various purposes. It is clear that the public at large, on purchasing tickets, are allowed to enter the ground/Stadium. Hence, the entry to the Stadium is open to the public at large on fulfilment of certain terms and conditions. The entry is not restricted to a defined body of individuals with a particular social standing or specific qualification or professional attainment or interests or purposes. When entry to Eden Gardens is thrown open to the public at large on purchase of ticket, the Eden Gardens ground/Stadium does not remain a private place but attains the status of a restricted public place.

9. Learned Senior Counsel further made submission on the aspect of whether or not the Cantonment Act, 1924 applies to Eden Gardens thereby excluding the jurisdiction of KMC. We do not dilate on that point as although the same was initially argued on behalf of CAB, subsequently the argument was not pressed, since, it transpired that requisite notification under the Cantonment Act was never issued.

10. Mr. Ghosh argued that when advertisements are deployed either inside or outside the Eden Gardens Stadium, such advertisements are visible from

a public place. The members of the public upon entering Eden Gardens area or Stadium see the advertisements. Further, the sports events conducted at the Eden Gardens are telecast through different modes for the purpose of allowing the people to watch and enjoy the same from public places/ streets. Hence, it cannot be said that the provisions of Section 204 of the KMC Act, 1980, could not have been invoked in respect of such advertisements.

11. Learned Counsel further submitted that the demand under challenge cannot be said to be arbitrary or in breach of the principles of natural justice. The imposition of advertisement tax has been made on the basis of calculation at the prescribed rates. In the instant case, though the demand notice did not include the details of computation, it was open to CAB to ask for such details, but it did not do so.

12. Mr. Ghosh relied on the decision of the Hon'ble Supreme Court in the case of ***Brihanmumbai Mahanagarpalika & Anr. v. Willingdon Sports Club & Ors., reported at (2013) 16 SCC 260*** and in particular reliance was placed on paragraph 20 of the reported judgment which reads as follows:-

> "**20.** In our view, both the aforesaid reasons are incorrect. A cursory reading of the definition of the expression 'eating house' may support the conclusion of the High Court because general public is not allowed entry in the premises of the Club and, in the first blush, it appears that food is not supplied for consumption on the premises for profit or gain. However, if we apply purposive interpretation, then it becomes clear that the Catering Department of the Club which prepares and serves/supplies food to members

of the club is covered by the definition of the expression 'eating house'. It cannot be denied that members of Club also fall within the ambit of the term 'public'. No doubt, the primary activity of the Club is to provide sporting facilities to the members, but the supply of food is an integral part of such activity and the Catering Department of the Club satisfies an essential component of the facilities provided by the Club. One can take judicial notice of the fact that many members who avail sporting facilities remain on the premises for a very long period. Therefore, the articles of food become integral part of their activities. Not only this, many join the Club in the name of availing sporting facilities only for the purpose of spending their time in leisure and for enjoying the facilities provided by the Catering Department of the Club. Thus, even though profit may not be the motto of catering facilities provided by respondent No.1, it certainly gains by these facilities."

13. Citing an unreported judgment of a Coordinate Bench of this Court rendered in ***APO no. 55 of 2016 with G.A. No. 2506 of 2015, KMC & Ors. v. Calcutta Ladies Golf Club & Ors.,*** Mr. Ghosh relied on the following observations in the said judgment:

"A member pays a monthly subscription to avail of the services of the Club and he also pays for the food and the drink that he buys. He has to make an extra payment to accommodate his gests or to avail of special certain facilities. It would be inconceivable and against reason that other places of public entertainment like licensed foreign liquor vendors, restaurants with orchestra or

facilities for floor show would be required to obtain an enlistment certificate whereas a club carrying out the same nature of activity from a restricted public place would be exempt from it. This certainly could not have been intention of the legislature."

14. Mr. Ghosh also argued that the argument relating to non-application of KMC Act, 1980, is self-contradictory since CAB has admitted paying advertisement tax for all advertisements put up outside the Eden Gardens Stadium.

15. As regards Article 285 of the Constitution, Mr. Ghosh submitted that the property in question is enjoyed and controlled by CAB which is a society registered under the Societies Registration Act. It has a separate and distinct entity and comes within the definition of 'owner' when it uses and enjoys the property of the Union of India under lease. In this connection reference was made to Section 2(62) of the KMC Act which reads as follows:-

> **"** 'owner' includes the person for the time being receiving the rent of any land or building or of any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose or as a receiver who would receive such rent if the land or building or of any part of the land or building were let to tenant**"**

16. Learned Advocate submitted that the property in question is assessed by KMC making CAB the person liable to pay property tax. In any event, advertisement tax is different from property tax and Article 285 does not have any manner of application. In this connection learned Counsel relied on the decisions of the Hon'ble Supreme Court in ***Electronics Corporation***

of India Ltd & Ors. v. Secretary, Revenue Department, Govt. of A.P. & Ors. reported at (1999) 4 SCC 458 paras 14 and 15 and Food Corporation of India v. Municipal Committee, Jalalabad & Anr., reported at (1999) 6 SCC 74.

Submission made on behalf of CAB

17. Appearing for CAB, Mr. Joydeep Kar, learned Senior Advocate, submitted that the notice of demand dated March 27, 1996, was not preceded by any bill raised by KMC or any show-cause notice or opportunity of hearing. The notice also does not contain any break-up of the amount or the rate at which advertisement tax has been charged. No reason is stated in the notice justifying either the imposition or the quantification of advertisement tax.

18. A comprehensive representation dated April 1, 1996, was made by CAB in response to the demand notice. In short, the contention of CAB was that Section 204 of the KMC Act is not attracted in the facts of the case.

19. Without responding to such representation, KMC lodged a complaint before the Municipal Magistrate, Kolkata, purportedly under Sections 620 and 580 of the KMC Act, read with Section 612 thereof, for taking cognizance of the purported criminal offence committed by CAB in not making payment of the demanded sum of Rs. 51,18,450/-. In the complaint, KMC alleged violation of Sections 202(1) and 204(1) of the KMC Act.

20. The notice of demand followed by the complaint lodged before the Municipal Magistrate, prompted CAB to file the instant writ petition.

21. Mr. Kar submitted that the following issues fall for consideration in the instant appeal:-

(i) Whether in-stadia advertisements exhibited inside the Eden Gardens Stadium can be said to be visible from a "public street or public place" so as to fall within the prohibition of Section 202 of the KMC Act (prior to its amendment in 2019) and thereby require written permission of the Municipal Commissioner?

(ii) Whether KMC can levy tax on advertisements in terms of Section 204 of the KMC Act, 1980, (prior to its amendment in 2019) without framing appropriate Regulations therefor?

(iii) Whether KMC is entitled, in law, to levy advertisement tax on advertisements put up on land and structures owned by the Union of India through the Defence Estates Officer, Ministry of Defence?

(iv) Whether the impugned notice of demand which does not contain any break-up and does not disclose the basis of the claim, is sustainable in law?

(v) Whether the impugned notice of demand can be sustained without affording an opportunity of hearing in consonance with the principles of natural justice?

(vi) Whether the impugned notice, being unreasoned, is arbitrary and perverse?

(vii) Whether liability for payment of advertisement tax rests with CAB?

22. Regarding issue (i) learned Senior Advocate submitted that the subject in-stadia advertisements were erected/exhibited within the precincts of the Eden Gardens Stadium. They were not visible from outside the Stadium. One necessarily needed to have access to and enter inside the Stadium for

such advertisements to be visible to him/her. The inside/interior of the Eden Gardens Stadium is certainly not a 'public street' as defined in Section 2(71) of the KMC Act, 1980. Therefore, the only question is whether the inside of the Eden Gardens Stadium can be said to be a public place.

23. The expression 'public place' is defined neither in the KMC Act nor in the General Clauses Act, 1897. In common parlance, for a particular place to be a public place, the members of the public must have absolute, unqualified and unconditional right of free access thereto at their own free will and volition without any restriction whatsoever. Such place should be open for entry by an indeterminate number of members of the public and not only to a definite or select or a determinate number. If the right of access to a premises is reduced to being a permissive or limited or restricted right or regulated (by tickets or passes), then such premises ceases to be a public place.

24. Mr. Kar submitted that members of the public do not have an absolute or unqualified or unconditional right of free access to the Eden Gardens Stadium. Such right of admission is reserved in favour of CAB. Moreover, such right is restricted to only specific days on which certain special matches are held and to only those persons who hold a valid ticket. Even then, such persons have the right of access to only that portion of the Stadium to which their tickets pertain and only on the specific date and for the limited period for which such tickets were issued. Even the number of people who can obtain such right of access is restricted by the seating capacity of the particular portion of the Stadium to which the tickets pertain.

25. Therefore, the Eden Gardens Stadium cannot be considered to be a public place. Consequently, no advertisement tax is payable for the in-stadia advertisements. In this connection reference was made to the following decisions:-

(i) The Corporation of Calcutta and Ors v. Sarat Chandra Ghatak and Anr reported at MANU/WB/0199/1959.

(ii) Rajammal v. Associated Transport Co. and Anr reported at 1968 SCC OnLine Mad 111: (1969) 2 Mad LJ 620. Paragraph 17

(iii) Khudi Sheikh v. King Emperor reported at 1901 SCC OnLine Cal 150 : (1991-02) 6 CWN 33.

(iv) Emperor v. Hussein Noor Mahomed reported at 1905 SCC OnLine Bom 1 : ILR (1906) 30 Bom 348.

(v) In Re: Kuchampudi Satyanarayana Raju and Ors. reported at AIR 1950 Mad 729.

(vi) P.K. Chacko v. Mariakutty and Ors. reported at 1986 SCC OnLine Ker 376 : (1990) 68 Comp Cas 340.

(vii) Directorate of Revenue and Anr v. Mohammed Nisar Holia reported in (2008) 2 SCC 370.

26. As regards issue (ii), learned Senior Advocate, referring to Section 204 of the KMC Act, 1980 (prior to its amendment in 2019) submitted that no Regulations have been framed as mandated by the KMC Act. Without such Regulations, the computation of the amount payable, if any, on account of advertisement tax, could not have been made and no amount could be demanded from CAB by way of the impugned notice or otherwise or at all.

Framing of regulations is a mandatory *sine qua non* for carrying out assessment of the amount alleged to be payable towards advertisement tax.

27. Mr. Kar submitted that Article 265 of the Constitution of India prohibits any tax from being levied or collected, except by authority of law. Assessing and demanding advertisement tax, in the absence of Regulations therefor, is without authority of law and *ultra vires* the Constitution. In this connection learned Counsel relied on the following two decisions:-

(i) Amit Kumar Singh & Anr. v. The Durgapur Municipal Corporation & Ors. reported in 2016 SCC Online Cal 4280 : 2016 (4) CHN 653.

(ii) Vital Nutraceuticals Private Limited and Ors. v. Union of India and Ors reported in MANU/MH/2967/2014.

28. It was further submitted that where a statute confers power on an authority to do a certain thing in a certain way, the thing must be done in that way or not at all; other methods of performance are necessarily forbidden.

29. In this connection the following decisions were referred to:-

(i) Taylor v. Taylor reported at (1875) 1 Ch. D. 426 @ 431.

(ii) Nazir Ahmad v. King-Emperor reported at AIR 1936 PC 253

(iii) State of Uttar Pradesh v. Singhara Singh and Ors. reported at AIR 1964 SC 358 : 1963 SCC OnLine SC 23.

(iv) Hussein Ghadially alias M.H.G.A Shaikh and Ors. v. State of Gujarat reported at (2014) 8 SCC 425.

30. As regards the third issue, referring to the indenture of lease executed by and between the 'President of India' as the lessor and CAB as the lessee, Mr. Kar submitted that it is the Union of India which not only owns the land on which the Eden Gardens Stadium is built, but that CAB also does not have any ownership right over the constructed Stadium and all other structures therein which are owned by the Union of India. Therefore, Article 285 (1) of the Constitution operates as an absolute bar to tax being imposed on CAB by KMC in respect of the Eden Gardens Stadium. The exception carved out in Article 285(2) of the Constitution is not attracted in the instant case, since Eden Gardens was not treated as liable for imposition of tax immediately before commencement of the Constitution. In this connection reliance was placed on the decision in the case of ***Turf Properties Limited v. Corporation of Calcutta and Ors. reported at AIR 1957 Cal 431***.

31. Mr. Kar referred to the decision of the Hon'ble Supreme Court in the case of ***New Delhi Municipal Council v. State of Punjab and Ors., Reported at (1997) 7 SCC 339*** to highlight the legislative intent behind Article 285 of the Constitution. In this context, the following decisions were also referred to by learned Senior Counsel:-

(A) Union of India Owner of the Eastern Railway v. Commissioner of Sahibganj Municipality reported at (1973) 1 SCC 676

(B) Municipal Corporation, Amritsar v. Senior Superintendent of Post Offices, Amritsar Division & Anr., reported at (2004) 3 SCC 92.

(C) Union of India v. State of Punjab and Ors. reported at AIR 1990 P & H 183.

32. Learned Senior Counsel further submitted that tax on advertisements under Section 204 of the KMC Act is leviable only when a person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post, kiosk or structure any advertisement or, displays any advertisement. This is further explained by Section 203 of the Act which requires a licence for the use of 'site' for advertisements. As such, the tax is leviable on the 'site' i.e. the property when an advertisement is put up thereat. Such tax is therefore exempted by virtue of Article 285(1) of the Constitution of India.

33. Learned Counsel submitted that the sovereign immunity granted under Article 285 of the Constitution of India is all encompassing and comprehensive and relates to all and any tax that may be imposed on any property of the Union of India, including advertisements erected thereon. Article 285 (1) does not contemplate that the protective umbrella conferred by it would be pierced in the case of any particular type of tax. As such, the tax on advertisement would also be covered by the all-embracing provisions contained in Article 285(1) of the Constitution.

34. It was submitted that the fact that by virtue of Article 285(1), no taxes whatsoever can be imposed on the properties of the Union of India (including the Eden Gardens Stadium and structures erected therein) would also appear from the letter dated May 10, 1994, addressed by the Deputy Secretary to the Government of India, to the Chief Secretaries to the Governments of all part 'A' & 'B' States disclosed by KMC as part of its

affidavit-in-opposition. The said letter along with connected documents make it manifest that save and except certain service charges only, such as conservancy, scavenging, water supply, drainage, roads, lighting which would be paid only up to a specified percentage, no other payment can be demanded in respect of the properties of the Union of India.

35. It was then submitted that Eden Gardens is situated in an area which is known as 'Hastings'.

36. From a conjoint reading of Sections 627 to 630 of the KMC Act, it would appear that all land and buildings belonging to the Government of India within the Hastings area is subject to the control of the General Officer Commanding, Presidency District. KMC is however vested with the power, in the interest of public health, to require the owner or occupier of any land or building in Hastings, to remedy or abate any sanitary defect on or in such land or building. Even with regard to erection of masonry building, no permission can be given by the KMC to carry out such work; only the sanction of the Central Government is required to carry out such work and such sanction shall not be applied for unless the plan therefor is approved by the Commissioner of Police. Therefore, KMC is not entitled to levy tax on advertisements or any other tax in respect of properties in the Hastings area.

37. As regards the fourth and fifth issues, Mr. Kar submitted that it is elementary that if there is a monetary demand, the same must contain break-up of the basis on which the demand has been made. There being no Regulation, in the absence of such basis/break-up, the demand is arbitrary and unsustainable in law.

38. It is a fundamental principle of administrative law that all decisions that entail civil consequences must be preceded by an opportunity of hearing in accordance with the principle of *audi alteram partem*. The said principle of natural justice is to be read into a statute even if the statue is silent on the issue of granting an opportunity of hearing to a party. Constitutional Courts lean in favour of reading in the principles of natural justice when faced with a regulatory statute. The application of the requirement of a prior hearing / pre-decisional hearing can be excluded only in situations where importing it would have the effect of paralyzing the entire process, and not otherwise. In this connection reliance was placed on:-

(i) Radhy Shyam (Dead) through LRs. and Ors. v. State of Uttar Pradesh and Ors. reported at (2011) 5 SCC 553.

(ii) State Bank of India and Ors. v. Rajesh Agarwal and Ors. reported at (2023) 6 SCC 1.

39. The demand notice required CAB to submit objection within 2 days of receipt of the notice; but the time to pay the demanded tax was limited to only 3 days. In other words, the opportunity to object to the demand was illusory, pretentious and deceptive. In fact, although CAB submitted a detailed representation dated April 1, 1996, objecting to the demand, totally disregarding the same, KMC straight away filed criminal proceedings against CAB before the Municipal Magistrate, Kolkata. There has been flagrant violation of the principles of natural justice in the facts of this case.

40. As regards the sixth issue, it was submitted that the impugned notice of demand does not contain any reason for either the imposition or

quantification of the amount levied towards advertisement tax. Therefore, the notice cannot be sustained. Reliance was placed on the following decisions:-

(i) Woolcombers of India Ltd. v. Woolcombers Workers Union and Anr reported in AIR 1973 SC 2758 : (1974) 3 SCC 318.

(ii) Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India and Anr reported in (1976) 2 SCC 981: AIR 1976 SC 1785.

(iii) The Calcutta Municipal Corporation and Ors. v. Paresh R. Kampani and Ors. reported in 1998 (2) Cal LJ 87: (1998) SCC Online Cal 38

(iv) Union of India and Ors v. Jai Prakash Singh and Anr reported in (2007) 10 SCC 712.

(v) State of Orissa and Ors. v. Chandra Nandi reported in (2019) 4 SCC 357.

41. As regards the last issue, Mr Kar submitted that the subject of the licence fee / tax under the statute is the 'site' for the advertisement. It is the user of the site who is required to obtain a licence, even under the provisions incorporated by the 2019 amendment to the KMC Act. Unless the contrary is shown, it is the advertiser who is primarily responsible for payment of the aforesaid permission fee and licence fee under Sections 202 and 203 (as incorporated by the 2019 amendment) of the KMC Act. Learned Advocate relied on the decision in the case of ***Kolkata Municipal***

Corporation and Ors v. Vodafone Idea Ltd reported at (2020) 3 Cal LT 543 : 2020 SCC OnLine Cal 3322.

It was submitted that KMC made no endeavour to ascertain the purport or effect of the contracts between CAB and the advertisers. CAB did not have any occasion or opportunity to produce such documents before KMC which took a unilateral decision in the matter. In the absence of any contrary evidence, KMC was entitled to levy the advertisement tax, if at all, on the advertisers only.

Court's View

42. Before considering the rival contentions of the parties, it will be helpful to extract the Letter of Demand dated March 27, 1996, issued by the licence officer, KMC, addressed to the President and the Honorary Joint Secretary of CAB. The subject of the letter is: 'Exhibition of Banners at C.A.B. playground Eden Gardens.' The body of the letter reads thus:-

> "I would request you to pay tax amounting to Rs 51,18,450/- on advertisement U/s 204 (1) of the CMC Act, 1980 for 11.2.96 and 13.3.96 within 3 days of receipt hereof, failing which legal proceedings may be taken against you. Payment in advance is imperative under the Act.
>
> Objection, if any (supported by documentary evidence), should be submitted within 2 days from the date of receipt of this **NOTICE**.
>
> Please quote number and date of receipt if payment has already been made."

43. The impugned demand notice cannot be sustained and must be quashed for several reasons.

44. Firstly, we see from the Letter of Demand that no breakup of the amount demanded has been provided. No details have been furnished. Simply an amount has been quoted. We do not see how one can meaningfully respond to such a notice of demand. However, a reply dated April 1, 1996, to the said notice was sent by learned Advocate for CAB. Without responding to such reply, KMC initiated criminal action against the officers of CAB before the Court of Municipal Magistrate, Calcutta. This was sometime in December 1996.

45. We are of the opinion that the time period prescribed in the notice of Demand i.e. 2 days, for raising an objection to the demand, is wholly unreasonable and inadequate. We do not see that there was any grave urgency in the matter that could have prompted the licence officer of KMC to grant only 2 days for responding to the demand notice. That there was no such urgency would also be borne out by the fact that criminal action was initiated only in December 1996. No opportunity of hearing was granted to CAB. We are of the view that the demand notice is violative of the principles of natural justice.

Some of the decisions on *audi alteram partem*

46. In this connection it may be helpful to notice the development of the law relating to the principle of *audi alteram partem.* In the case of ***Cooper v. Wandsworth Board of Works reported at (1863) 143 ER 414***, an English Court observed that "Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where are thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?"

47. In the English case of ***Board of Education v. Rice reported at 1911 AC 179 (HL)***, Lord Loreburn observed thus:-

> **"**Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds.....in such cases.....they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial....they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial in their view.**"**

48. In ***Ridge v Baldwin reported at (1963) 2 All ER 66***, Lord Reid emphasised on the universality of the right to a fair hearing whether it concerns property or tenure of an office or membership of an institution.

49. In ***O' Reilly v. Mackman reported at (1982) 3 All ER 1124***, Lord Diplock observed that the right of a man to be given a fair opportunity of hearing and of presenting his own case is so fundamental to any civilised legal system that it is to be presumed that Parliament intended that failure to observe the same would render null and void any decision reached in breach of this requirement.

50. In ***Lloyd v. McMahon reported at (1987) 1 All ER 1118***, Lord Bridge observed that the so-called rules of natural of justice are not engraved on tablets of stones. It is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the

courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

51. In ***Sayeedur Rehman v. State of Bihar and Ors reported at (1973) 3 SCC 333***, a three Judge Bench of the Hon'ble Supreme Court observed that the unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.

52. In ***Mohinder Singh Gill and Anr v. Chief Election Commissioner, New Delhi and Ors reported at (1978) 1 SCC 405***, the Hon'ble Supreme Court observed that natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Arthashastra-the rule of law has had this stamp of natural justice which makes it social justice. The roots of natural justice and its foliage are noble and not new-fangled. Our jurisprudence has sanctioned its prevalence like

the Anglo-American system. Once it is understood that the soul of the rule is fair play in action, it must be held that it extends to both judicial and administrative fields.

53. In ***Maneka Gandhi v. Union of India and Anr., reported at (1978) 1 SCC 248***, the Hon'ble Supreme Court observed that the *audi alteram partem* rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *audi alteram partem* rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time, it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to- secure the rule of law and the court should not be too ready to eschew it in its application to a given case. The court must make every effort to follow this cardinal rule to the maximum extent permissible in a given case. The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

54. In ***Swadeshi Cotton Mills v. Union of India reported at (1981) 1 SCC 664***, the Hon'ble Supreme Court referred to the development of law relating to applicability of the rule of *audi alteram partem* to administrative actions, noticed several previous judgements of the English Courts and the Hon'ble Supreme Court and quashed the order passed by the Central Government for taking over the management of the industrial undertaking of the appellant on the ground that opportunity of hearing had not been given to the owner of the undertaking and remanded the matter for fresh consideration and compliance with the rule of *audi alteram partem*.

55. In ***State of Punjab and Anr v. Gurdial Singh and Ors., reported at (1980) 2 SCC 471***, the Hon'ble Supreme Court observed that the compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons.

56. In the recent case of ***State Bank of India and Ors. v Rajesh Agarwal and Ors., (Supra), at paragraphs 36, 41, 42, 70, 80 and 85-92*** of the reported judgment, the Hon'ble Supreme Court observed as follows:

> "**36.** We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative

authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence :(i) *nemo judex in causa sua*, which means that no person should be a Judge in his own cause; and (ii) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power."

41. In ***State of Orissa v. Dr (Miss) Binapani Dei and Ors reported at AIR 1967 SC 1269***, a two Judge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice:

> "**9.**... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil

consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

42. In ***Maneka Gandhi v. Union of India and Anr reported at (1978) 1 SCC 248***, a seven Judge Bench of this Court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court.

70. In ***Mangilal v. State of M.P reported at (2004) 2 SCC 447***, a two Judge Bench of this Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected:

"**10.** *Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand.* Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. *Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment.... Its aim is to secure justice or to prevent*

miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."

80. *Audi alteram partem* has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. In ***Union of India and Anr v. Tulsiram Patel reported at (1985) 3 SCC 398***, this Court explained the wide amplitude of *audi alteram partem*:

"**96.** *The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence.* The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial

adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry."

85. Fairness in action requires that procedures which permit impairment of fundamental rights ought to be just, fair, and reasonable. The principles of natural justice have a universal application and constitute an important facet of procedural propriety envisaged under Article 14. The rule of *audi alteram partem* is recognised as being a part of the guarantee contained in Article 14. A Constitution Bench of this Court in ***Union of India and Anr v. Tulsiram Patel reported at (1985) 3 SCC 398*** has categorically held that violation of the principles of natural justice is a violation of Article 14. The Court held that any State action in breach of natural justice implicates a violation of Article 14:

"**95.** The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus violation of a rule of natural justice- results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: *therefore, a violation of a principles of natural*

justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or state action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."

86. In ***Cantonment Board, Dinapore and Ors v. Taramani Devi reported at 1992 Supp (2) SCC 501***, a two Judge Bench of this Court held that the rule of *audi alteram partem* is a part of Article 14. Similarly, in ***Delhi Transport Corporation v. Mazdoor Congress reported at 1992 Supp (1) SCC 600***, this Court observed that the rule of *audi alteram partem* enforces the equality clause in Article 14. Therefore, any administrative action which violates the rule of *audi alteram partem* is arbitrary and violative of Article 14.

87. Administrative proceedings which entail significant civil consequences must be read consistent with the principles of natural justice to meet the requirement of Article 14. Where possible, the rule of *audi alteram partem* ought to be read into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14. The Master

Directions on Frauds do not expressly provide the borrowers an opportunity of being heard before classifying the borrower's account as fraud. *Audi alteram partem* must then be read into the provisions of the Master Directions on Frauds.

88. In ***Olga Tellis and Ors v. Bombay Municipal Corporation and Ors reported at (1985) 3 SCC 545***, a Constitution Bench of this Court was called upon to adjudge the validity of section 314 of the Bombay Municipal Corporation Act, 1888. The provision enabled the Municipal Commissioner to remove, without notice, any object, structure or fixture which was set up in or upon any street. Y.V. Chandrachud, C.J. delivering the judgment of the Constitution Bench held that the impugned provision must be construed to ensure that the procedure contemplated is fair and reasonable. It was further held:

> "**44.**... What Section 314 provides is that the Commissioner **may**, without notice, cause an encroachment to be removed. It does not command that the Commissioner shall, without notice, cause an encroachment to be removed. Putting it differently, Section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. *That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the*

validity of the law. Reading Section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid."

89. In ***Union of India v. COL. J.N. Sinha and Anr reported at (1970) 2 SCC 458***, a two Judge Bench of this Court held that an endeavour must be made to interpret a statutory provision consistent with the principles of natural justice:

"**8.**.. *It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authority intend to act in accordance with the principles of natural justice.* But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the provision concerned the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of to power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

90. In ***C.B. Gautam v. Union of India and Ors reported at (1993) 1 SCC 78***, the question before a Constitution Bench of this

Court was whether a show-cause notice must be issued to an intending purchaser and seller of property before making a compulsory purchase under Section 269-UD(1) of Chapter XX-C of the Income Tax Act 1961. M.H. Kania, C.]. speaking for the Constitution Bench held that where the validity of a provision would be open to serious challenge for want of an opportunity of being heard, courts have read such a requirement into the provision, In C.B. Gautam case, this Court read the principles of natural justice into the provisions of Chapter XX-C to save them from the vice of arbitrariness, The Constitution Bench held :

> "**30.**... Again, there is no express provision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269-UD must be read into the provisions of Chapter XX-C. *There is nothing in the language of Section 269-UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of said Chapter, they would be seriously open to challenge on the ground of*

violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when order for purchase is made under Section 269-UD - reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made."

91. In ***Sahara India (Firm) (1) v. CIT reported at (2008) 14 SCC 151***, a two-judge Bench of this Court was called upon to decide whether an opportunity of being heard has to be granted to an assessee before any direction could be issued under Section 142(2-A) of the Income Tax Act, 1961 for special audit of the accounts of the assessee. This Court held that since the exercise of power under Section 142(2-A) of the Income Tax Act leads to serious civil consequences for the assessee, the requirement of observing the principles of natural justice is to be read into the said provision.

92. In ***Kesar Enterprises Ltd. v. State of U.P and Ors reported at (2011) 13 SCC 733***, the Court dealt with a challenge to the validity of Rule 633(7) of the Uttar Pradesh Excise Manual which allowed the imposition of a penalty for breach of the conditions of a bond without expressly issuing a show-cause notice. D.K. Jain, J, speaking on behalf of the two-judge Bench held that a show-cause notice should be issued and an opportunity of being heard should be afforded before an Order under Rule 633(7) is made. The Court held that the rule would be open to challenge for being violative of Article 14 of the Constitution unless the requirement of

an opportunity to show cause is read into it. The Court observed:(SCC p. 743, paras 30 & 32)

> *"30. Having considered the issue, framed in para 16, on the touchstone of the aforenoted legal principles in regard to the applicability of the principles of natural justice, we are of the opinion that keeping in view the nature, scope and consequences of direction under sub-rule (7) of Rule 633 of the Excise Manual, the principles of natural justice demand that a show-cause notice should be issued and an opportunity of hearing should be afforded to the person concerned before an order under the said Rule is made, notwithstanding the fact that the said Rule does not contain any express provision for the affected party being given an opportunity of being heard.*
>
> *32.* In our view, therefore, *if the requirement of an opportunity to show cause is not read into the said Rule, an action thereunder would be open to challenge as violative of Article 14 of the Constitution of India on the ground that the power conferred on the competent authority under the provision is arbitrary."***"**

57. Keeping the above discussion in mind and reverting to the facts of the instant case, we have noted above that two days' time was granted by KMC to CAB to object to the letter of demand. Such time period is far too short and the purported opportunity of raising objection or showing cause, if one were to consider the letter of demand as a show cause notice, was illusory.

Granting such inadequate time for responding to the letter of demand itself offends the principles of natural justice. Being a statutory authority, KMC was required to act fairly by granting a reasonable time period to CAB for responding to the notice of demand. Calling upon the noticee (CAB) to pay the money demanded within three days from the date of receipt of notice and record objection, if any, within two days of receipt of notice, was clearly an unfair and unreasonable act on the part of KMC.

58. Be that as it may, CAB responded to the demand notice through its lawyer's letter dated April 1, 1996, after having received the notice at its office on March 28, 1996. In the said letter it was clearly contended that the demand raised on CAB is without jurisdiction, illegal, arbitrary, wrongful and mala fide. It was also contended that the premises of CAB is not a public place and therefore Section 204 of the KMC Act would have no manner of application. The point of breach of the principles of natural justice was also raised in the reply. Relevant portions of the reply are extracted hereunder:-

> "Cricket Association of Bengal is an independent Association registered under the West Bengal Societies Registration Act. Its premises is a place to which the members of public have no unrestricted right of access and Cricket Association of Bengal may, without violating the law, refuse access to a member of the public even though he is prepared to pay for such access. It is not a public place within the meaning of the Calcutta Municipal Corporation Act. The position in law, therefore, is that the

provisions of Chapter XIV and in particular Section 204 of the Calcutta Municipal Corporation Act, 1980 do not empower or authorise the Calcutta Municipal Corporation to impose any tax in respect of any advertisements displayed to a few of a selected gathering within the premises of Cricket Association of Bengal limited for a few hours in association with the sporting event. 'Public place' or 'Public view' under the law means where public have legal right to access and regularly frequented as a matter of right. The premises of Cricket Association of Bengal is not a public place either within the said meaning of or within the fold of chapter XIV of the Calcutta Municipal Corporation Act, 1980 relates to advertisements or displays erected for a continuous period for commercial purpose and not for a few hours only associated with a particular non-profit making object. Moreover, it is a condition precedent that display or advertisement must be visible from a public street or a public place. In stadia advertisements inside the premises of Cricket Association of Bengal were neither visible from any public street or public place. Thus the alleged demand of yours is utterly misconceived and contrary to the Provisions of Act itself. The records also reveal that Calcutta Municipal Corporation knowing fully well that it is not entitled to claim any alleged tax as has been purportedly done in the instant subject matter, has at no point of time ever demanded, collected or claimed any similar tax from any other sporting events or other similar objects in past.

…

It is mandatorily required under the law that a responsible authority would and must exercise fairly and bonafide judgement and distinctly, affirmatively and legally determine any amount that is being claimed by fixing a definite rate, mode of calculation and upon a prior notice and due opportunity of hearing. Regrettably, all the above ingredients are absent in the instant arbitrary and wrongful demand. Even long prior to raising the alleged demand, Press statements were issued, *inter alia*, stating that demands are being raised on Cricket Association of Bengal and if not paid, its assets would be attached and sold.

In the premises, as aforesaid, while denying and disputing each and every allegations, demands, and/or contentions contained in your alleged purported demand it is specifically stated that the same is utterly malafide, wrongful, misconceived and illegal apart from being arbitrary and capricious. You are, thus, hereby called upon to forthwith withdraw your aforesaid demand failing which Cricket Association of Bengal shall be compelled to take such recourse as it may be advised in accordance with law holding you entirely responsible and liable for all costs, consequences and further damages that may be sustained by it without any further reference to you, which please note. It would not be out of context to state that it inspite of this, you intend or decide to proceed with the threats as contained in your letter under reference, you would

do so at your own risk and consequences and my client shall defend the same at your costs and consequences."

59. It is not in dispute that KMC received the aforesaid reply issued on behalf of CAB. KMC did not respond to the same, as it should have done, in our view. In consonance with the principles of natural justice, KMC ought to have informed CAB as to why the objections raised in CAB's reply are not acceptable. KMC should have also offered an opportunity of hearing to CAB. Without doing any of that, KMC filed criminal proceedings against office bearers of CAB under the provisions of the KMC Act. The demand raised by KMC has civil consequences for CAB. It was imperative for KMC to raise or press such claim only after observing the principles of natural justice, which it did not do. This is the first ground on which the letter or notice of demand dated March 27, 1996, must be quashed.

60. Secondly, coming to the issue as to whether or not the impugned notice of demand is arbitrary for want of reasons, we see that the demand notice does not furnish any breakup of the amount that CAB has been called upon to pay. The notice does not mention the particulars of the advertisements in respect of which tax is claimed. The notice does not indicate as to how the figure of Rs. 51,18,450/- was arrived at by KMC. It is not possible for anybody to understand by reading the notice, on what basis the amount of Rs. 51,18,450/- has been claimed. Such a notice must be held to be arbitrary and unsustainable in law.

61. Thirdly, another issue raised by CAB is that without framing appropriate Regulations, KMC could not have levied advertisement tax in

respect of the concerned advertisements. We find merit in this contention also. Section 204 of the KMC Act which has been extracted above, authorises KMC to claim advertisement tax at such rate as "the Corporation may determine by regulations or as the budget estimate shall state under sub-section 3(3) of Section 131". KMC has not been able to produce any Regulation in the aforesaid regard, nor has KMC been able to indicate that the budget estimate for the relevant year prescribes the rate at which the KMC could have levied advertisement tax. Hence, there does not appear to be any basis on which or any formulae recognized by law following which the computation of tax has been made.

62. Further, it is trite law that when a statute empowers or authorises an authority to do a certain act and indicates in the statute itself the manner in which that act shall be done, then and in that event, that act shall be done only in the manner prescribed by the statute or shall not be done at all. Any other mode of doing that act is necessarily forbidden.

63. Perhaps the leading authority on this point is the celebrated decision of the Chancery Division of the English High Court in the case of ***Taylor v. Taylor, (Supra).*** Jessel M.R. observed in the judgment that when a statutory power is conferred for the first time upon a Court, and the mode of exercising such power is pointed out, it means that no other mode is to be adopted. In ***Nazir Ahmad v. The King Emperor (Supra)*** the Privy Council reiterated that where a power is given to do a certain thing in a certain way, the thing must be done in that way, to the exclusion of all other methods of performance, or not at all. Noting the said two decisions, the Hon'ble

Supreme Court, in the case of ***State of Uttar Pradesh v. Singhara Singh and Ors., (Supra)*** held that the rule adopted in ***Taylor v. Taylor (Supra)*** is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if these were not so, the statutory provision might as well not have been enacted. This principle of law was again emphasised by the Hon'ble Supreme Court in the case of ***Hussein Ghadially alias M.H.G.A Shaikh and Ors. v. State of Gujarat (Supra)***.

64. That apart, without framing Regulations or without the budget estimate prescribing the rates at which advertisement tax may be levied by KMC, computation and imposition of such tax would be arbitrary. It would have no rational basis. It would then be open to KMC to quantify such tax as per its sweet will. This cannot be countenanced under the rule of law. There must be a guiding factor following which advertisement tax can be assessed and imposed. On this ground also the demand notice is bad in law.

65. Mr. Ghosh learned Senior Counsel representing KMC did urge that CAB has paid the advertisement tax claimed by KMC in respect of hoardings put up at places which are admittedly public places. Hence, CAB cannot today argue that in the absence of Regulations or mention of rates of tax in the budget estimate for the relevant year, KMC's demand in the impugned notice is bad in law. We are unable to accept such argument. Even if CAB has earlier paid advertisement tax demanded by KMC, CAB cannot be

prevented from arguing the point of absence of Regulations, etc, since there can be no estoppel against a statute.

66. Coming to the next point, it has not been disputed by KMC that the advertisements erected/exhibited within the Eden Gardens Stadium were not visible from outside the Stadium. Only the people inside the Stadium could see such advertisements. Therefore, the question is whether the Eden Gardens Stadium can be said to be a public place?

67. Neither the KMC Act nor the General Clauses Act, 1897, defines the phrase 'public place'. In our opinion, the phrase has to be given its natural meaning. It must mean a place which is open to the public at large. In other words, any member of the public must have access to that place without any restriction. Nobody's permission should be required for visiting such a place. Black's Law Dictionary, 10th Edition, defines public place as "any location that the local State or National Government maintains for the use of the public, such as highway, park, or public building."

68. In our opinion, as soon as conditions are imposed on members of the public for having access to a place, that place ceases to be a public place. A public place must be accessible to an indeterminate number of people without any hindrance or condition. For example, the Maidan in Kolkata is undisputedly a public place. The river side is also a public place. Any member of the public has absolute, unconditional and unrestricted access to such places, at any time.

69. In this connection one may refer to the Division Bench Judgment of this Court in the case of ***The Corporation of Calcutta and Ors v. Sarat Chandra Ghatak and Anr (Supra)*** wherein one of the issues involved was

whether or not under Section 229 of the Calcutta Municipal Act, 1951, the Corporation was empowered to impose tax in respect of advertisements displayed to public view in a private cinema house. It was argued on behalf of the Cinema House owner that the Cinema House was not a public place within the meaning of Section 229. ***Das Gupta C.J.*** in his judgment observed, as follows:- " I agree with the learned Judge that it is difficult from the decided cases to conclude one way or the other whether the words "public place" have been used in this section in the restricted sense of a place where the public have a legal right of access or in the wider sense of a place where the public are permitted to go or habitually go the matter has to be decided on a consideration of the purpose of the legislation as also with the help of whatever light is available to other portions of the same statute.

.... It is undisputed that the cinema house is a place where the members of the public have no unrestricted right of access and the owner of the cinema may, without violating the law, refuse access to a member of the public even though he is prepared to pay for such access. On all these considerations I have come to the conclusion in disagreement with the learned Trial Judge that the cinema house is not a public place within the meaning of the Municipal Act, 1951...."

Bachawat J. in his judgment observed as follows:- "... I have come to the conclusion that the case law does not lay down any general rule as to the meaning to be given to the words "public place". In my opinion, the words "public place" in S. 229 mean a place to which the public have a legal right of access. Purna Theatre is a privately owned cinema house. The public are

admitted to the cinema shows on payment of charges. But no member of the public has a legal right of access. The management of the cinema house has a right to refuse admission to any member of the public without assigning any reason. The cinema house is not a public place. It is no more a public place than the inside of a grocer's shop or the consulting room of a dentist…"

70. In ***Rajammal v. Associated Transport Co. and Anr, (Supra)***, it fell for consideration by the Madras High Court as to whether or not the place where the concerned lorry met with an accident was a public place in the context of Section 2(24) of the Motor Vehicles Act, 1939, which defined "public place" as "a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage." In that context the Court held that it is clear from the definition of "public place" that "the criterion is whether the public have right to access to the place; and it will not be a public place merely, if as a matter of fact, the public have access."

71. In ***Khudi Sheikh v. King Emperor, (Supra)***, the petitioners had been convicted under Section 11 of the Gambling Act, 1867 for indulging in gambling activities within a *thakurbari* surrounded by a high compound wall. A Division Bench of this Court held that the *thakurbari* was not a place where any member of the public was entitled to go. The bench further observed : "the Sub-Divisional Magistrate, who convicted the accused, has held that it is 'public place' because "anybody and everybody was allowed to

go in and come out." The ground, as stated by the Magistrate, cannot be supported. Though in a *thakurbari* belonging to a Hindu anybody and everybody would be allowed to go in, yet the owner of the *thakurbari* is entitled to prevent any particular individual going in if he so chooses …."

72. Keeping in mind the aforesaid discussion, would one be justified in describing the Eden Gardens Stadium as a public place? In our opinion, the answer must be in the negative. CAB is the lessee of the property where the Stadium is situate. CAB can deny permission to anybody to enter the Stadium even on a day when a match is on and the person is willing to pay for the ticket. The members of the public do not have absolute or unrestricted right of access to Eden Gardens. Just because Eden Gardens Stadium can accommodate a huge number of people, maybe close to a lakh, that would not per se make the Stadium a public place. Take for example, may be an extreme example, that a rich person owns a private Stadium which can accommodate two hundred thousand people. He organises sports activities in the Stadium and sells tickets which interested spectators can purchase for watching the activities inside the Stadium. On a particular day games are played before a packed Stadium. Hoardings are put up by brand owners inside the Stadium which are visible only to people who are inside the Stadium. Would KMC be entitled to impose advertisement tax in respect of the same? We think not. Although two hundred thousand spectators may be viewing the advertisements, yet, the private Stadium is not a public place. The owner of the Stadium will be entitled to deny entry to an interested person even if he offers to pay for a ticket.

Therefore, it is not the dimension of a place or number of people that visit a particular place, that would determine the nature of a place as 'private or public'. The only criterion must be whether or not the members of the public have an unrestricted right of access to that place. Applying this test, Eden Gardens Stadium cannot be held to be a public place.

73. On this aspect of the matter, learned Single Judge in the order impugned before us referred to the decision in ***Sarat Chandra Ghatak, (Supra)*** and held : "applying such ratio to a Stadium, it can be said that the Stadium cannot be considered as a public place as a member of the public does not have an unrestricted right of access and that the writ petitioners may, without violating the law, refuse access to a member of the public even though such member of the public is prepared to pay for such access."

We completely agree with the learned Single Judge.

74. Mr. Ghosh, learned Senior Counsel representing KMC sought to argue that even if the Eden Gardens Stadium is not a public place because of the fact that members of the public do not have unrestricted right of entry thereto, the Stadium can definitely be classified as "restricted public place". We are afraid, the concept of "restricted public place" finds no place in Section 204 of the KMC Act nor is that phrase defined in any dictionary, to the best of our knowledge.

75. Another point urged by CAB was that even if it be held that KMC was entitled to levy advertisement tax, it could do so only on the advertisers and not on CAB in the absence of there being any evidence of any kind of

arrangement between the advertisers and CAB whereby the latter agreed to take upon it the burden of advertisement tax. We find merit in this point also and the same is squarely covered by a Division Bench judgement of this Court in the case of ***Kolkata Municipal Corporation and Ors. v. Vodafone Idea Limited and Anr., reported at 2020 SCC On Line Cal 3322 : (2020) 3 Cal LT 543***.

76. The two decisions relied upon by learned Counsel for KMC and discussed above, are not germane to the facts of this case. In both the cases, what fell for consideration is whether the concerned clubs were included within the expression 'eating house' and therefore required to obtain certificate of enlistment. It was held that members of a club also fall within the ambit of the term 'public'. Though the primary activity of a club may be to provide sporting facilities to the members, yet, supply of food is an integral part. Therefore, the clubs needed to obtain certificate of enlistment.

77. Since we have held that the inside of the Eden Gardens Stadium is not a 'public place' and therefore Section 204 of the KMC Act (as it was before the 2019 amendment), would not be attracted and also because we have held that the notice of demand is even otherwise bad in law for the reasons discussed above, we do not deem it necessary to consider or decide the other points agitated by the parties including whether or not KMC is entitled to levy advertisement tax on hoardings put up on land and structures owned by the Union of India.

78. In view for the aforesaid we find no reason to interfere with the impugned judgement and order. The appeal and the connection application are, accordingly, dismissed. There will be no order as to costs.

79. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

I agree.

(Kausik Chanda, J.)