



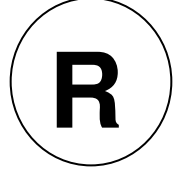
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 46688 OF 2017 (LB-BMP)



BETWEEN:

1. SRI. B.S. GUPTA
AGED ABOUT 53 YEARS
S/O SRINIVASA GUPTA
SECRETARY, GUPTA EDUCATION TRUST
NO.808, 100 FEET RING ROAD
HOSAKEREHALLI, BSK III STAGE
BANGALORE-560 085.

...PETITIONER

(BY SRI. RAJENDRA KUMAR SUNGAY T.P., ADVOCATE)

AND:

1. THE COMMISSIONER
BRUHAT BENGALURU MAHANAGARA PALIKE
N.R. SQUARE
BANGALORE-560 002.
2. THE ASSISTANT REVENUE OFFICER
BRUHAT BENGALURU MAHANAGARA PALIKE
PADMANABHANAGARA SUB-DIVISION
BANGALORE-560 002.

...RESPONDENTS

(BY SRI. MOHAN KUMAR K.V., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE ORDERS BOTH DATED 18.11.2016 BEARING





NO.ARO(PNN)/ADVT/PR/1/16-17 AND NO.ARO(PNN)/ADVT/PR/4/16-17 ISSUED BY RESPONDENT NO.2 AT ANNEXURES-D AND D1 RESPECTIVELY, ETC.

THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned petition is filed challenging the legality and validity of tax demand issued by respondent No.2/ Assistant Revenue Officer, BBMP under Section 134 of the Karnataka Municipal Corporation Act, 1976 (hereinafter referred to as 'the Act') for alleged advertisement displayed on the petitioner/institution on its premises.

2. Brief facts leading to the case are as under:

Petitioner is a registered educational institution engaged in imparting education through its college located within the jurisdiction of respondent No.1/Corporation. Petitioner is running an institution in the name of Gupta College in the building bearing No.808, 100 feet Ring Road, Hosakerehalli, BSK III Stage, Bengaluru - 85. Petitioner has purchased the above said property



comprising of four floors in 2004 and intended to run an educational institution. In 2007, the institution is recognized by the name Gupta College and the same is being run under the Gupta Education Trust. Petitioner therefore asserts that Gupta Education Trust is a charitable trust and is offering PU courses in Commerce and Science and degree courses in B.Com and B.BA disciplines and PG course in M.Com. The building where this institution is running the courses is used for educational purpose and no commercial activities are undertaken in the said building.

The petitioner, an educational institution, is aggrieved by the imposition of advertisement tax as reflected in the demand notices issued by the respondent, produced at Annexures-B and C, and the consequential orders passed thereon, at Annexures-D and D1. The petitioner has challenged the said orders on the ground that it is a charitable and non-commercial institution, not engaged in any form of commercial advertising as



contemplated under the relevant taxing provisions. It is contended that the levy of advertisement tax on such an institution is ultra vires, amounts to an unreasonable fiscal burden, and is not envisaged under the statutory scheme of the Act.

3. Petitioner's counsel reiterating the grounds has vehemently argued that tax demand is without jurisdiction, misconceived and violative of Article 14 and 19(1)(g) of the Constitution of India. It is urged that petitioner is a non-profit institution engaged in charitable activity and this signage displayed is purely informative and devoid of any commercial content. Therefore, petitioner's counsel would submit that the same does not fall within the definition of "advertisement" under the BBMP Advertisement Bye-laws 2006.

4. Per contra, the learned counsel appearing for the respondent-Corporation has opposed the petition and refuted the contentions urged by the petitioner. He



submits that the impugned orders are legally sustainable, having been passed in accordance with law. Placing reliance on Section 134 of the Act, he contends that the Corporation is duly empowered to levy tax on advertisements, including signage and hoardings. He further submits that the petitioner-institution had erected hoardings and display boards without obtaining prior permission from the Corporation, and therefore, the levy of advertisement tax is justified and in consonance with the statutory provisions.

5. Heard learned counsel for the petitioner and learned standing counsel for the respondents. Perused the records.

6. Before proceeding to examine the merits of the case, this Court finds it appropriate to refer to the relevant statutory provisions that bear significance to the issue raised in the present petition. The provision that warrants consideration is Rule 2A(1) of the BBMP Advertisement



Bye-laws, 2006, which defines the term "Advertisement."

The said provision reads as under:

"2A(1) "Advertisement" means and includes any device or representation in any manner such as announcement or direction by word, letter, model, image, or a combination thereof sign by means of posters, hoarding, banners, temporary arches, electronic display, name boards, direction boards, balloons or any other visible or audible media, etc. displayed to promote a product or service in a commercial sense under categories covered in these definitions."

7. Further Section 134 of the Act empowers the Corporation to levy tax on advertisement other than advertisements published in the newspaper. Section 134 is extracted for ready reference which reads as under:

134. Tax on advertisement.- Every person who erects, exhibits, fixes or retains, upon or over any land, building, wall or structure any advertisement or who displays any advertisement to public view in any manner whatsoever, in any place whether public or private, shall pay on every advertisement which is so erected, exhibited, fixed, retained or displayed to public view, a tax calculated at such rates and in such manner and subject to such exemptions, as the corporation may, with



the approval of the Government, by resolution determine:

Provided always that the rates shall be subject to the maxima and minima laid down by the Government in this behalf:

Provided further that no tax shall be levied under this section on any advertisement or a notice,-

*(a) of a public meeting, or corporation of the city,
or*

*(b) of an election to any legislative body,
or*

(c) of a candidature in respect of such an election:

Provided also that no such tax shall be levied on any advertisement which is not a sky-sign and which,-

*(a) is exhibited within the window of any building;
or*

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



(c) 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

(d) relates to the business of any railways; or

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

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

Explanation 2.- *The expression 'sky-sign' shall, in this section, mean any advertisement, supported on or attached to any post, pole, standard, frame work or other support wholly or in part upon or over any land, building, wall or structure which, or any part of which shall be visible against the sky from some point in any public place and includes all and every part of any such post, pole, standard, frame-work or other support. The expression 'sky-sign' shall also include any balloon, parachute or other similar device employed wholly or in part for the purposes of any advertisement upon or over any land, building or structure or upon or over any public place but shall not include,-*

(a) any flag-staff, pole, van or weather-cock, unless adapted or used wholly or in part for the purpose of any advertisement; or



(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one continuous face and not openwork, and does not extend in height more than one meter above any part of the wall or parapet or ridge to, or against, or on which it is fixed or supported; or

(c) any advertisement relating 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

(d) any advertisement relating exclusively to the business of a railway, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway, and so placed that it cannot fall into any street or public place; or

(e) any notice of land or buildings to be sold, or let, placed upon such land or buildings.

Explanation 3.- 'Public place' shall, for the purpose of this section, mean any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not."



8. Section 134 of the Act empowers the Corporation to levy tax on those entities where the essence of advertisement is to promote or bring to notice for commercial advantage. Now coming to the facts on hand, the object of establishing educational institution is charitable and not commercial. A plain reading of Section 134 suggest that legislative intent behind the imposition of tax, commercial or promotional advertisements, particularly those aimed at attracting public attention for commercial benefit.

9. In the present case, the signage and boards displayed by the petitioner/institution are fixed on the property owned and possessed by the petitioner/institution and these hoardings are meant purely for institutional identification and providing directions to students, parents and staff devoid of any promotional or commercial messaging encouraging profit oriented activity.



10. The photographs produced along the memo dated 22.11.2017 unequivocally demonstrate that the structure in question is a signage affixed to the college building and serve the sole purpose of identifying the educational institution. The signage is modest in size, contains only the name of the institution and its emblem. On top of this building, a few hoardings are also noticed. The placement of signage and hoardings on the college building does not display any promotional content, advertisement of third party goods or services or inducement to the public to avail any trade offering. The placement of signage on the college building being part and parcel of the institution's physical infrastructure is not intended to solicit business. Such signage lacks the essential character of an advertisement as defined under Rule 2A(1) of the BBMP Advertisement Bye-laws 2006. Therefore, in absence of any commercial or promotional content, the said signage cannot be subjected to advertisement tax under Section 134 of the Act.



11. The Hon'ble Apex Court in ***T.M.A.Pai Foundation & Others vs. State of Karnataka***¹ has categorically held that education is not commerce. It is an essential charitable activity. Similarly, in ***P.A.Inamdar & Others vs. State of Maharashtra***², it was reiterated that the object of establishing educational institution is charitable and not commercial. Therefore, any fiscal statute that imposes a levy based on commercial activity must be read in a manner consistent with the nature of the subject. The signage in question or hoardings are not intended to induce any member of public to purchase goods or avail services and hence lacks essential element of "advertisement", as contemplated under the Bye-laws 2006.

12. The Hon'ble Apex Court further in the case of ***Municipal Corporation of Greater Mumbai vs. Indian Oil Corporation Limited***³, held that the essence of

¹ (2002) 8 SCC 481

² (2005) 6 SCC 537

³ AIR 1991 SC 686



advertisement is to promote or bring to notice for commercial advantage. Mere display of name or direction or a name of educational institution with a particular logo cannot be treated as a taxable advertisement unless it carries an element of commercial activity consequently generating revenue from such advertisement.

13. It is also a well settled principle of law that taxable statutes must be construed strictly and in case of ambiguity, the benefit must go to the subject and not to the revenue. Unless the levy falls squarely within the four corners of the taxing statute, no liability can be fastened.

14. In this case, no provision under the Act clearly brings such non-commercial educational signage within the ambit of taxation. The respondent/Corporation has not placed on record any material to show that signage in question is in the nature of commercial promotion or carries any element of inducement. Even assuming that the respondent/Corporation has reservations regarding the



size, placement or aesthetic aspects of the signage affixed to the petitioner's college building or hoardings erected on top of the educational institution, such concern pertain to regulatory domain rather than taxing power of the Corporation.

15. Therefore, this Court is of the view that power to levy advertisement tax under Section 134 of the Act must be strictly confined to displays that fall within the statutory definition of advertisement under the above said section, which necessitates a commercial or promotional character. The signage in question or hoardings being a non-commercial institutional identifier does not meet this threshold.

16. However, if the Corporation is of the view that signage of a particular size or form affects the urban landscape or public aesthetics, it is always open to the Corporation to frame uniform, reasonable and non-arbitrary regulatory policies in exercise of its planning or



building control functions applicable across all establishments.

17. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) Writ petition is hereby ***allowed***;

(ii) The impugned orders dated 18.11.2016, passed by respondent No.2 produced at Annexures-D and D1, are hereby quashed;

(iii) The respondents are directed to consider the petitioner's representations dated 20.12.2016 and 08.05.2017 submitted at Annexures-E and G, seeking exemption from payment of advertisement tax, and to pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of a certified copy of this order.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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