KANDIVALI COOPERATIVE INDUSTRIAL ESTATE AND ANOTHER

v.

MUNICIPAL CORPORATION OF GREATER MUMBAI AND OTHERS

(Civil Appeal No. 1431 of 2015 etc.)

FEBRUARY 04, 2015

[M.Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

Mumbai Municipal Corporation Act, 1988 - s.368(5) - Trade Refuse Charges - Imposition - Revised by the Circular dated 11.10.2011 issued by Municipal Corporation of Greater Mumbai - Propriety of - Held: The competent authority under the Act has the power to notify Trade Refuse Charges to be collected from its trade licencees - However, provision under clause (6) of the Notification to increase trade refuse charge by 10% every year from the year 2009 is arbitrary, without guidelines and violative of principles of natural justice - Therefore, the authority directed not to recover any increased Trade Refuse Charges without giving opportunity of hearing to the licencee or to the persons liable to pay such increased charges - Constitution of India, 1950 - Article 14 - Principles of Natural Justice - Audi Alteram Partem.

Disposing of the appeal, the Court

HELD: 1. 1. From a conjoint reading of the provisions u/ss. 367, 368, 394 and 479 of Mumbai Municipal Corporation Act, 1888, it is manifestly clear that the Commissioner may from time to time inter alia specify conditions and restrictions while granting trade licence. The Commissioner may notify the charges including trade refuse charges i.e. to be collected from the trade licencees. [Para 17] [1005-D]

A **2. In almost all the statute dealing with legal administration, Municipal Authorities have inevitably to be delegated the power of taxation. The aim and object of the scheme have to be taken into consideration while deciding the question as to the excessive exercise of**
B **power in the matter of collection of fees and charges. [Para 23] [1010-F-G]**

The Commissioner, Hindu Religious Endowment, Madras vs. Sri Lakshmindra Tirtha Swamiar of Shirur Mutt **(1954) 1 SCR 1005 - referred to.**
C

3. A fee is a payment primarily in public interest, but for some special services rendered or some special work done for the benefit of those from whom payments are demanded. In other words, fees must be levied in
D **consideration of certain services which the individual accepts willingly or unwillingly. It is also necessary that fees or charges so demanded must be appropriated for that purpose and must not be used for other general public purposes. Further, the legislature can delegate its**
E **power to statutory authority, to levy taxes or fees and fix the rate in regard thereto. An Act delegating power to the local body without providing a maximum rate does not by itself render the delegation excessive or invalid. [Paras 25 and 27] [1011-E, F; 1012-A, B]**

F **4. The element of compulsion or coercion is present in all impositions, though in different degrees and that it is not totally absent in fees. The compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent and this**
G **element is present in taxes as well as in fees. [Para 26] [1011-G]**

5. In Clause (4) of the impugned Circular, provision has been made for making application by persons in
H **respect of particular business who do not agree with the**

revised trade refuse charge may approach the authority by making necessary application and on such application or representation, appropriate response shall be given to those persons, who have any grievance to that effect. Therefore, the respondent-authority is directed to follow the procedure mentioned in clause (4) of the circular. [Para 29] [1012-F-G]

6. Increasing trade refuse charge by 10% every year from 2009 as provided by Clause (6) of the impugned Circular, is highly arbitrary and without any guidelines. The automatic increase irrespective of the nature of business carried on by the Licencee also violates principles of natural justice. Therefore, the respondent shall not recover any increased trade refuse charges with effect from 2009 without giving reasonable opportunity of hearing to the licencee or persons liable to pay such increased charges. The actual increase can be ascertained and realized in future but not without giving reasonable opportunity of hearing to the licencee or the persons liable to pay the said increased charges. [Paras 30 and 31] [1012-H; 1013-A-B]

Doran Bomanji Ghadiali vs. Jamshed Kanga and others **AIR 1992 Bom. 13;** *Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla,* **(1992) 3 SCC 285: 1992 (3) SCR 328;** *Gupta Modern Breweries vs. State of J& K* **(2007) 6 SCC 317: 2007 (5) SCR 343;** *Leelabai Gajanan Pansare vs. Oriental Insurance Co. Ltd.* **(2008) 9 SCC 720: 2008 (12) SCR 248;** *Consumer Online Foundation vs. Union of India* **(2011) 5 SCC 360: 2011 (5) SCR 911;** *B.C. Banerjee & Ors. vs. State of M.P. & Ors.* **(1970) 2 SCC 467: 1971 (1) SCR 844;** *Corporation of Calcutta and Anr. v. Liberty Cinema, Assam* **(1965) 2 SCR 477;** *Gulabchand Bapalal Modi vs. Municipal Corpn. of Ahmedabad City* **(1971) 1 SCC 82: 2011 (13) SCR 26;** *Union of India vs. Nitdip Textile Processors (P) Ltd.* **(2012) 1 SCC 226 - cited.**

Case Law Reference:

AIR 1992 Bom. 13	cited	Para 11
1992 (3) SCR 328	cited	Para 11
2007 (5) SCR 343	cited	Para 11
2008 (12) SCR 248	cited	Para 11
2011 (5) SCR 911	cited	Para 12(vi)
(1965) 2 SCR 477	cited	Para 12(vi)
1971 (1) SCR 844	cited	Para 12(vi)
2011 (13) SCR 26	cited	Para 12(vi)
(2012) 1 SCC 226	cited	Para 13
(1954) 1 SCR 1005	referred to	Para 24

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1431 of 2015.

From the Judgment and Order dated 30.07.2013 of the High Court of Judicature at Bombay in Writ Petition No. 1263 of 2013.

WITH

Civil Appeal Nos. 1433, 1436, 1434 and 1435 of 2015

Shyam Divan, Chander Uday Singh, Jatin Zaveri, Neel Kamal Mishra, Somnath Padhan (For Anagha S. Desai), Pratap Venugopal, Sonal Doshi, Surekha Raman, Gaurav Nair (For K. J. John & Co.) for the Appellants.

L. Nageshwar Rao, ASG, J. J. Xavier, Bhargava V. Desai, Vishal Chaudhary for the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted. A

2. These appeals are directed against the common judgment and order dated 30.7.2013 passed by the High Court of Bombay in the writ petitions preferred by the appellants.

3. By the impugned judgment and order, the High Court B dismissed the writ petitions preferred by the appellants challenging the Circular dated 12th December, 2011 and the respective entries made in the schedule appended thereto issued by the Respondent-Municipal Corporation of Grater Mumbai as also the respective entries in the schedule C appended thereto, thereby questioning the levy of 'trade refuse charges' and the rates thereof.

4. The appellants are traders, carrying on activities of warehouse keepers, godown keepers, bank mukadam, carriers D of stores, material and goods required to be stored and kept safe from insects, ants, rodents, moisture, rain, heat, fire etc. For this purpose, the appellants from time to time have been obtaining trade licences issued under Section 394 of the Mumbai Municipal Corporation Act, 1888 (in short, 'MMC Act'). E According to the appellants, the respondents recover 'trade refuse charges' (hereinafter referred to as 'TRC'), by making the payment thereof a condition for renewing the trade licences under the MMC Act on a yearly basis.

5. Respondent Corporation, vide circular dated 5.6.1999 F fixed the pattern of Trade Refuse Charges (TRC) to be collected from the owners/occupiers of trade premises. On receiving various representations from the traders, Municipal Commissioner took the decision of modifying the earlier charges levied on the trade refuse. Therefore, the TRC were G revised by the Respondent Commissioner vide a circular dated 14.1.2008 w.e.f.1.1.2008 by almost 300% of the trade licence fees. It was further stated that the same was required to be collected once in a year along with the Licence fees at the time of renewal of licences issued under section 394 of the Mumbai H

A Municipal Corporation Act, 1888. The appellants and several other parties made representations and preferred writ petitions urging reconsideration of the rates, which were disposed of by the Bombay High Court by an order dated 12.4.2010 upon the statement being made on behalf of the respondents that they B would reconsider the rates of TRC.

6. Respondent Corporation gave a hearing to the representations and instructed the department concerned to submit the detailed report. A Core Committee was constituted which submitted its report in 2010. On consideration of Core C Committee report, TRC were modified by the impugned Circular dated 12.12.2011. The circular stipulated that the TRC would be collected with retrospective effect from 1.1.2008 onwards.

D 7. Although there was very significant reduction in rates of trade refuse charges to be collected, the appellants, being dissatisfied, again moved the Bombay High Court by way of writ petitions, contending that they merely receive goods from the customers for purposes of safe custody and upon receipt E of the prescribed charges, return such goods to the customers in the same conditions. For this purpose, they provide adequate space, security and safeguards against fire, rain, water, etc. In the process, neither any solid waste, nor any trade refuse is generated. In the circumstances, it is their case that F levy of TRC upon them and that too with retrospective effect i.e. from 2008 is illegal, arbitrary and unconstitutional. The appellants further contended that they do not generate any trade refuse and, therefore, question of payment of TRC does not arise.

G 8. The High Court by the impugned common order dismissed the writ petitions of the appellants holding that there is nothing illegal, arbitrary, unreasonable or unconstitutional in the levy of TRC by the respondents. It was observed that the question as to whether the appellants generate 'trade refuse'

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or not is a disputed question of fact, which cannot be adjudicated in proceedings under Article 226 of the Constitution of India. The High Court did not find any merit in the contention that the levy of TRC is invalid, because according to the Appellants there is no element of 'quid pro quo'. The Appellants are certainly benefited, in as much as they have been called upon to pay TRC at reduced rates with effect from the year 2008. No retrospectivity is involved in the implementation of the Circular dated 12th December, 2011. If the contention is upheld, it is the appellants who would suffer a higher TRC. The High Court has further held that provisions of Sections 368(5) and 394(5) read with Section 479 of the MMC Act entitle the respondents to impose restrictions and conditions at the time of grant of licence. The same principle will be applicable even at the stage of renewal of licences. At this juncture, we consider it appropriate to reproduce the reasoning of the High Court in this regard:

> "The linkage which is challenged by the appellants in the present petition is more concerned with the manner of recovery of TRC and not competence of the respondents to recover TRC. In deciding the manner, we are once again of the opinion that this is a policy matter and sufficient free hand is required to be conceded to the respondents in formulation of such policy. The respondents are right in submitting that it is not possible to monitor each and every establishment for purposes of determining the precise quantity and quality of 'trade refuse' generated. So also the respondents are right in contending that there is nothing illegal, arbitrary or unconstitutional in respondents recovering TRC at the stage of renewal of licences. From the averments made by the appellants themselves, it appears that this has always been the manner in which the respondents have been collecting TRC. In matters of policy, merely because some other system of collection may be better, is no ground to exercise power of judicial review. As long as it is not demonstrated that the manner

A of collection is ex-facie, absurd, unreasonable or disproportionately oppressive, we are unable to uphold the seventh challenge as to the linking. We find nothing absurd, unreasonable or disproportionately oppressive in the policy adopted by the respondents or the manner of
B collection of TRC."

9. Being aggrieved, the appellants call in question the correctness of the common judgment and order passed by the High Court in a batch of Writ Petitions dated 30.7.2013.

C 10. Mr. Shyam Divan, learned senior counsel appearing for the appellant in SLP No.30485 of 2013, assailed the impugned Circular dated 11.10.2011 as being illegal, *ultra vires* and unconstitutional. Learned counsel submits that the respondents cannot demand, levy or recover any tax, cess or
D compulsory exaction without authority of law as mandate under Section 265 of the Constitution. According to the learned counsel, Section 368(5) empowers the Commissioner to fix the charges only when the owner or occupier of trade premises seeks permission to deposit trade refuse temporarily upon any
E place appointed by the Commissioner in this behalf and upon such permission granted by the Commissioner. It was urged that none of the members of appellant had ever sought such permission from the Commissioner and, therefore, the question of levy of trade refuse charges under Section 368(5) of the Act
F does not arise. According to the learned counsel any compulsory exaction whether it be a fee or tax or any other levy must be backed by law. The Circular dated 12.12.2011 imposing trade refuse charges is irrational and arbitrary.

11. Mr. Divan, learned senior counsel, submitted that the
G levy of TRC is contrary to the judgment of Bombay High Court in *Doran Bomanji Ghadiali vs. Jamshed Kanga and others*, AIR 1992 Bombay page 13 whereby the High Court has held that the only charge that can be levied on traders is to the limited extent provided under Section 368(5) of the Act. The Court
H further held that the fee imposable by Section 479 of the said

Act must relate to licence or written permission for any purpose required under the Act and, therefore, the charge could only be for permission to deposit the trade refuse temporarily at a particular place and would not apply to traders not seeking such permission to dump their refuse at any place. Learned counsel drew our attention to various sections of the Act and submitted that the manner in which the imposition or levy of charges contemplated under Section 368(5) of the Act, is ultra vires. Learned counsel relied upon the decision in the case of *Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla,* (1992) 3 SCC 285, which was subsequently followed in the case of ***Gupta*** *Modern Breweries vs. State of J& K,* (2007) 6 SCC 317 and *Leelabai Gajanan Pansare vs. Oriental Insurance Co. Ltd.,* (2008) 9 SCC 720.

12. Mr. Chander Uday Singh, learned senior counsel, appearing on behalf of appellants in SLP (C) Nos. 35558, 35589 and 35593 of 2013, after referring relevant provisions of Municipal Corporation Act, made the following submissions:-

(i). The appellants are engaged in the warehousing business and they do not generate any trade refuse, thus entitling the Respondents to levy the TRC. Neither they are conducting any manufacturing activity due to which solid waste can be generated and, hence, the term TRC has been misinterpreted and equated to garbage. It was asserted that the Appellants merely receive goods from the customers for the purpose of safe custody and upon receipt of the prescribed charges, return such goods to the customers in the same condition. Therefore, the Respondents are wrong in treating every kind of refuse as 'trade refuse' and on the said incorrect premise imposing TRC upon the appellants. 'Trade refuse' should mean and imply some solid waste generated by an industry involved in manufacturing process and in this regard reliance is placed upon sub-clauses (a) and (b) of Section 367 and sub-sections (1) and (5) of Section 368 of the MMC Act and as the terms "refuse" and "trade refuse" have been

A dealt with separately this is indicative that every kind of refuse cannot be qualified as "trade refuse".

(ii). It was pointed out that Respondents' own inspection reports of warehouses show that those warehousers only generated dust, tree leaves, etc. and in a quantity of only one and a half to two baskets. This cannot, by any stretch of imagination, be treated as trade refuse since the dust and tree leaves are blown into the warehouses by the wind and not on account of any activity being carried out by the warehousers/appellants. Further, under Section 370 of the MMC Act it will be incumbent on the occupier of any premises situate in any portion of the city for which the Commissioner has not given a public notice under Section 142 (a) and in which there is no water closet or privy connected to municipal drains, to cause all excrementitious and polluted to be collected and to be conveyed to the nearest receptacle /depot provided for this purpose under Section 367 (b) and not (a). Pertinently, 367 (a) deals with dust, ashes, refuse and rubbish and 367 (b) deals with trade refuse. Thus "trade refuse" is obnoxious refuse and cannot and ought not be equated with refuse generated in any trade /business establishment. It is submitted that this vital difference has been ignored and TRC is being unlawfully sought to be levied upon the appellants who generate no "trade refuse at all".

(iii). It was the contention of the learned counsel that the appellants, who are engaged in the warehousing business, do not generate any trade refuse and in the event TRC constitutes a 'tax' there is no taxable event for imposition of tax in the form of TRC. Alternatively, if TRC is to be regarded a 'fee', then, on account of the circumstance that the appellants generate no trade refuse at all, there is no element of 'quid pro quo' and hence levy of fee in the form of TRC is illegal and invalid.

H (iv). It was submitted that the linking of payment of TRC

with renewal of trade licences under section 394 of the MMC Act, is illegal, invalid and, therefore, renewal of trade licences under section 394 of the MMC Act ought to be granted, irrespective of whether the appellants pay TRC or not. The TRC being levied in addition to the normal licence fees for issue of trade licences under Section 394 of the MMC Act, there is double charging, which is wholly arbitrary and unreasonable and without authority of law, particularly, qua the Appellants, who do not generate any 'trade refuse'. It was, therefore sought to be submitted, that the levy and collection of TRC cannot be linked to the renewal of an annual trade licence granted to the Appellants for conducting warehousing activity when there is no statutory provision enabling such linkage; and in the facts and circumstances and absence of any specific authority to levy a retrospective charge or fee, Respondent No.1 could not levy TRC with effect from 1.1.2008 when a solemn assurance was made by Respondent No.1 to the Bombay High Court that there would be no linkage between TRC and licence fees collected at the stage of renewal. Under Section 471 of the MMC Act, Respondent No.1 is entitled to impose penalty for contravention of Section 368 (1) to (4) and under Section 472 of the Act, the Respondent No.1 is entitled to impose penalty for continuing offence in contravention of any provision of Section 368 (1) to (5). When penalty provisions are provided under the Act, payment of TRC has been without any basis or justification whatsoever sought to be linked with renewal of the Trade Licence, which is impermissible and bad in law. Furthermore, only valid trade licence holders are being charged TRC. It becomes pertinent to note that after 1976, Respondent No.1 has stopped issuing warehousing licences in the Greater Mumbai Area. Therefore, the burden on TRC is only being applied to valid licence holders and not to others who are carrying on the trade without any licence.

(v). It was again pointed out that the Respondents have completely ignored their own Circular No. ChE/280/SWM dated 06.04.2010 which categorically states that for the year 2010, TRC will be levied on the basis of licence fees of the licence issued by the Shops & Establishment Department of the MMC and that the Respondents will delink TRC from licence fees in future and new TRC levy pattern will be introduced. The TRC is now wrongfully charged on the basis of sq. mtr. footage of area of premises and is in fact more than the licence fees which is wholly illogical, irrational, arbitrary and without any authority of law. The policy adopted by the Respondents and the manner of collection of TRC (whether charged based on number of employees or square meter area) is absurd, unreasonable and disproportionately oppressive, without Application of mind and incompetent and without the authority of law.

(vi). Lastly, it was contended that any compulsory execration of money by the Government for a tax or a cess has to be strictly in accordance with law and there should be a specific provision for the same and there is no room for intendment and nothing is to be read or nothing is to be implied and one should look fairly to the language used. Our attention was drawn to the decision of this Court in *Consumer Online Foundation vs. Union of India* (2011) 5 SCC 360. In this behalf it was sought to be pointed out, that Imposition of levy/charges by Respondent No.1 is in the nature of a tax and not a fee and hence such imposition without backing of statutes is unreasonable and unfair. Learned counsel also drew our attention to the decisions of this Court in the cases of *Gupta Modern Breweries vs. State of J&K & Ors.* - (2007) 6 SCC 317 and *B.C. Banerjee & Ors. vs. State of M.P. & Ors.* (1970) 2 SCC 467.

13. Mr. L. Nageswar Rao, learned Additional Solicitor

General appearing for the respondents, firstly contended that the constitutional validity of Section 368(5) of the Act was never challenged by any of the appellants as being ultra vires to the Constitution. The appellants have only prayed in the writ petitions for issuance of appropriate writ directing the respondents to cancel and/or withdraw the Circulars dated 14.1.2008 and 11.10.2011 and also to withdraw the notice dated 9th June, 2014. Learned counsel submitted that the appellants challenged the circular by arguing that the manner of collection of trade refuse charges was contrary to law. The competence of the authority to demand and levy TRC has not been challenged at any point of time. Distinguishing the imposition of fee/TRC and tax, learned counsel put heavy reliance on the ratio decided by this Court in the case of *The Commissioner, Hindu Religious Endowment, Madras vs. Sri Lakshmindra Tirtha Swamiar of Shirur Mutt,* (1954) 1 SCR 1005. Mr. Rao referred to the Core Committee Report and submitted that the validity of guidelines provided therein cannot be tested on any ground. Learned counsel put reliance on a decision in the case of *Corporation of Calcutta & Anr. vs. Liberty Cinema, Assam*, (1965) 2 SCR 477. Learned counsel also made submission on the object and purpose of collection and submitted that absolute equality is impossible for the purpose of levy of fee or charges. Learned counsel referred the decision of this Court in the case of *Gulabchand Bapalal Modi vs. Municipal Corpn. of Ahmedabad City, (1971) 1 SCC 82, Union of India vs. Nitdip Textile Processors (P) Ltd., (2012) 1 SCC 226.*

14. Before appreciating the rival contentions made by the parties, we would like to refer the relevant provisions of Bombay Municipal Corporation Act, 1988. Section 3 (yy) defines the word 'trade refuse' as under:-

> "3(yy) "Trade refuse" means and includes the refuse of any trade, manufacture or business."

15. Section 367 empowers the Commissioner to make

provision for providing receptacles, depots and places for temporary deposit or final disposal of waste articles including trade refuse. Section 367 is quoted hereinbelow:-

"367. Provision and appointment of receptacles, depots and places for refuse, etc.,

The Commissioner shall provide or appoint in proper and convenient situations public receptacles, depots and places for the temporary deposit or disposal of—

(a) dust, ashes, refuse and rubbish;

(b) trade refuse;"

16. Section 368 lays down the provisions with regard to the duty of owners and occupiers for the purpose of collecting and depositing dust etc. Sections 368, 394 and 479, which are under consideration in these appeals, read as under:-

"**368.** Duty of owners and occupiers to collect and deposit dust, etc. ,

(1) It shall be incumbent on the owners and occupiers of all premises to cause all dust, ashes, refuse, rubbish and trade refuse to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice, from time to time prescribes in the public receptacle, depot or place provided or appointed under the last preceding section or the temporary deposit or final disposal thereof

(2) .....

(3).....

(4)-.....

(5) Notwithstanding anything contained in this section, if the owner or occupier 'of any trade premises desires

permission to deposit trade refuse, collected daily or periodically from the premises, temporarily upon any place appointed by the Commissioner in this behalf, the Commissioner may, on the application, and on payment of such charges as the Commissioner may from time to time, fix, allow the applicant to deposit the trade refuse accordingly." A B

"**394.** Certain articles (or animals) not to be kept, and certain trades, processes and operations not to be carried on without a licence; and things liable to be seized destroyed, etc., to prevent danger or nuisance.- C

(1) Except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall— D

(a) keep, or suffer or allow to be kept, in or upon any premises,

(I) any article specified in Part I of Schedule M; or,

(II) any article specified in Part II of Schedule M, in excess of the quantity therein specified as the maximum quantity (or where such article is kept along with any other article or articles specified in that Schedule, such other maximum quantity as may be notified by the Commissioner) of such article which may at any one time be kept in or upon the same premises without a licence; E F

(b) keep, or suffer or allow to be kept, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule M; G

(c) .....

(d).....

(e) carry on or allow or suffer to be carried on, in or upon any premises.— H

A (I) any of the trades specified in Part IV of Schedule M, or any process or operation connected with any such trade;

(II) any trade, process or operation, which in the opinion of, the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in which, or the conditions under which, the, same is, or is proposed to be carried on;

(f) carry on within [Brihan Mumbai] or use or allow to be used any premises for, the trade or operation of a carrier.

(2).....

(3).....

(4).....

(5) It shall be in the discretion of the Commissioner.—

(a) to grant any licence referred to in sub-section (1), subject to such restrictions or conditions (if any,) as he shall think fit to specify, or (b) for the purposes of ensuring public safety, to withhold any such licence:

Provided that, the Commissioner when withholding any such licence shall record his reasons in writing for such withholding and furnish the person concerned a copy of his order containing the reasons for such withholding:

Provided further that, any person aggrieved by an order of the Commissioner under this sub-section may, within sixty days of the date of such order, appeal to the Chief Judge of the Small Cause Court, whose decision shall be final."

"**479.** Licences and written permission to specify condition etc, on which they are granted:-

(1) Whether it is provided in this Act that a licence or a written permission Licences and may be given for any purpose, such licence or written permission shall specify the wntten. period for which, and the restrictions and conditions subject to which, the same is granted, and shall be given under the signature of the Commissioner or of a munici pal officer empowered under section 68 to grant the same.

(2).....

(3).....

(4)....."

17. From a conjoint reading of the provisions quoted hereinbefore, it is manifestly clear that the Commissioner may from time to time *inter alia* specify conditions and restrictions while granting trade licence. The Commissioner may notify the charges including trade refuse charges i.e. to be collected from the trade licencees.

18. In exercise of power conferred upon the Commissioner under the MMC Act, a Circular was issued on 14.1.2008 raising the TRC by almost 300 percent of the trade licence fees with the stipulation that the TRC would be collected at the time of renewal of the licence under Section 394 of the Act which were due to expire in December, 2009. As noticed above the said Circular dated 14.1.2008 was challenged before the Bombay High Court by way of writ petitions. When the writ petitions were taken up for hearing, learned counsel appearing for the respondent-Corporation informed the Court that the rate of trade refuse charges is under reconsideration by the Authority. On the basis of submissions made by the counsel for the Corporation, the writ petitions were disposed of as the grievances of the traders were satisfied.

19. In December, 2011, the respondents after re-consideration of the tariff fixed in the earlier circular came with

A another Circular dated 11.10.2011 whereby the TRC rate was revised effective from 1st January, 2008. Perusal of the revised rates appended thereto would show that the rates have been significantly reduced in respect of different types of business. Instead of quoting the revised rates we would like to quote
B hereinbelow the modified circular dated 11.10.2011. The English translation of the Circular reads as under:-

"MUNCIPAL CORPORATION OF GREATER MUMBAI

(Solid Waste Management Department)

C

No. Pra.A/11384/SWM

Dated 11.10.2011

CIRCULAR

D

Subject:-: Revision/Modification in the trade refuse charge.

For the purpose of recovering Trade refuse charge by Solid Waste Management Department in Municipal Corporation of Greater Mumbai, the Mayor's Council gave
E approval vide Resolution No.14 dated 15.4.99 to recover the said charge in certain multiplication of licence/ registration charge without making any category of the business. According to that procedure, the orders were issued vide Circular Pra. A/17785/SWM dated 14.1.2008,
F regarding entrusting the responsibility on (1) Licencing Department (2) Shops & Establishment Department (3) health department and (4) Market Department, by co-relating the expenses incurred then for disposal of the waste and the multiplication of licencing/registration
G charges and also to recover 'Trade refuse charges' at the time of renewal of licence and deposit the same under the head 'Miscellaneous Charges' of Income under Financial Budget Head of Solid Waste Management Department.

H However, considering the complaints/ representations as

well as certain other aspects regarding Trade refuse charge, meetings were held with the officials of 1) Licencing Department, Shops & Establishment Department (3) health department and (4) Market Department and after detailed deliberations it was proposed to carry out suitable modifications in Trade refuse charges for which the business people were examined regarding the Trade refuse charge. The examination reports received from all the department levels were carefully studied and the aspects such as the Trade refuse charge being levied on the business, the expenditure incurred for disposal of the waste generated by them were examined, and accordingly Hon'ble Municipal Commissioner has given approval vide No. MGC/F/5874 dated 2.9.2011 to charge Trade refuse charge accordingly and following decision was taken.

(1) As the Trade refuse charge being levied by the Shops & Establishment Department in proportion with the waste generation, hence it will be continued as per the circular No. Pra.A/6123 dated 05.06.1999.

(2) The businesses for which the complaints about the Trade refuse charge being more and in respect of whom changes in the Trade refuse charge have been made in accordance with their waste generation from the year 2008, have been indicated in 'schedule B-1".

(3) Trade refuse charge for the halls used for marriages and parties is being introduced now. The solid waste generated in halls of schools, colleges and the functions in layout R.G. Plots of the housing societies, is not included in commercial tax.

(4) In respect of the business who do not agree with the revised Trade refuse charge, applications may be accepted from them in enclosed format and after examining the same, a

A report be sent to the concerned Asst. Engineer (S.W.M.) for submitting to Chief Engineer (S.W.M.).

(5) In respect of the business where there are more than one licences, the Trade refuse charge will be levied on the B licence of which the fees are more than other licences.

(6) Trade refuse charge will be increased by 10 percent every year from the year 2009.

(7) In respect of the businesses who have paid the Trade C refuse charge at less/more rate than the rate mentioned in the circular, it should be adjusted at the time of recovering, Trade refuse tax from the next year with effect from 2008. In respect of the business whose rates of Trade refuse charge have not been increased/decreased or those business who have so far D not paid the Trade refuse charge, the same should be recovered from them immediately at the rate indicated in the Circular of 2008.

All the concerned department heads will take note of this circular and take further action.

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Sd/-
Chief Engineer (S.W.M.)
11.10.11.
Licencing Superintendent."

F 20. The Bombay High Court, while passing the impugned order dismissing the writ petitions came to the conclusion that the MMC Act confers power upon the authorities of the respondents to impose conditions at the time of grant of trade licence and also to recover trade refuse charges. The High G Court observed:-

"21. The provisions of sections 368(5) and 394(5) read with Section 479 of the MMC Act, in our view, entitle the respondents to impose restrictions and conditions at the time of grant of licence. The same principle will be

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applicable even at the stage of renewal of licences. The linkage which is challenged by the appellants in the present petition is more concerned with the manner of recovery of TRC and not competence of the respondents to recover TRC. In deciding the manner, we are once again of the opinion that this is a policy matter and sufficient free hand is required to be conceded to the respondents in formulation of such policy. The respondents are right in submitting that it is not possible to monitor each and every establishment for purposes of determining the precise quantity and quality of 'trade refuse' generated. So also the respondents are right in contending that there is nothing illegal, arbitrary or unconstitutional in respondents recovering TRC at the stage of renewal of licences. From the averments made by the appellants themselves, it appears that this has always been the manner in which the respondents have been collecting TRC. In matters of policy, merely because some other system of collection may be better, is no ground to exercise power of judicial review. As long as it is not demonstrated that the manner of collection is ex-facie, absurd, unreasonable or disproportionately oppressive, we are unable to uphold the seventh challenge as to the linking. We find nothing absurd, unreasonable or disproportionately oppressive in the policy adopted by the respondents or the manner of collection of TRC.

22. We have already held that there is nothing illegal, arbitrary, unreasonable or unconstitutional in the levy of TRC by the respondents. In these circumstances, we are not inclined to exercise the jurisdiction under Article 226 of the Constitution of India in order to assist the appellants, who desire to either postpone or avoid payment of TRC and at the same time enjoy the benefits of a renewed licence. Upon grant of renewal, the MMC shall have to initiate fresh proceedings in order to recover TRC, thereby giving the appellants opportunity to resist or delay in the

A payment of the same. The extra-ordinary jurisdiction under Article 226 of the Constitution of India cannot be exercised for such purposes."

21. As stated above, the constitutional validity of Section 368(5) of the Act has not been challenged in the writ petitions. B The power of the Commissioner in fixing and demanding trade refuse charges by the impugned Circular have been questioned in all those writ petitions which are the subject matter of these appeals. The only challenge is the Circular dated 11.10.2011 and the respective entries in the schedule appended thereto C issued by the respondents on the ground that the rate fixed in the schedule appended to the Circular is wholly irrational and full of arbitrariness. The main contention made by the appellants are that they do not generate any trade refuse and, therefore, the rate fixed for levy of TRC is arbitrary, D unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

22. Since the constitutional validity of different provisions including Section 368 of the Act was not challenged, we do not E think it necessary to go into the vires of the said provisions. The only issue that needs to be considered is as to whether the fees or charge imposed by the impugned Circular dated 11.10.2011 is just and proper or suffers from arbitrariness.

23. There is no dispute with regard to the settled legal F proposition that in almost all the statute dealing with legal administration, Municipal Authorities have inevitably to be delegated the power of taxation. The aim and object of the scheme have to be taken into consideration while deciding the question as to the excessive exercise of power in the matter G of collection of fees and charges.

24. However, it would be appropriate to refer the principles laid down by this Court in the case of *The Commissioner, Hindu Religious Endowment, Madras vs. Sri Lakshmindra* H *Tirtha Swamiar of Shirur Mutt,* (1954) 1 SCR 1005: AIR 1954

SC 282, which according to us will be the complete answer to the points raised by Mr. Divan and Mr. Singh, learned senior counsel appearing for the appellants. In para 44, this Court observed:

> "44. Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay (Vide Lutz on "Public Finance" p. 215.). These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

25. A fee undoubtedly, is a payment primarily in public interest, but for some special services, rendered or some special work done for the benefit of those from whom payments are demanded. In other words, fees must be levied in consideration of certain services which the individual accept willingly or unwillingly. It is also necessary that fees or charges so demanded must be appropriated for that purpose and must not be used for other general public purposes. Further, indisputably, the legislature can delegate its power to statutory authority, to levy taxes or fees and fix the rate in regard thereto.

26. Elaborating the distinction between the tax and a fee, this Court in number of decisions held that the element of compulsion or coercion is present in all impositions, though in different degrees and that it is not totally absent in fees. The compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

27. Since the provisions of Section 368(5) of the Act is

not under challenge the decisions relied upon by Mr. Divan and Mr. Singh, learned senior counsel appearing for the appellants, will have no application in the facts and circumstances of the present case. Be that as it may, it is well settled that an Act delegating power to the local body without providing a maximum rate does not by itself render the delegation excessive or invalid.

28. Coming back to the impugned Circular, it reveals that after considering the complaints and representations and certain other aspects regarding trade refuse charges, decisions have been taken by the authority. Clause (4) and (6) of the said circular are re-quoted hereinbelow:-

> (4) In respect of the business who do not agree with the revised Trade refuse charge, applications may be accepted from them in enclosed format and after examining the same, a report be sent to the concerned Asst. Engineer (S.W.M.) for submitting to Chief Engineer (S.W.M.).
>
> (6) Trade refuse charge will be increased by 10 percent every year from the year 2009."

29. So far clause (4) is concerned, provision has been made for making application by persons in respect of particular business who do not agree with the revised trade refuse charge may approach the authority by making necessary application and on such application or representation, appropriate response shall be given to those persons, who have any grievance to that effect. We, therefore, direct the respondent-authority to follow the procedure mentioned in clause (4) of the circular.

30. As regard clause (6) of the Circular, *prima facie* we are of the definite opinion that increasing trade refuse charge by 10% every year from 2009 is highly arbitrary and without any guidelines. In our considered opinion, the automatic increase

of trade refuse charges by 10% every year irrespective of the nature of business carried on by the Licencee violates principles of natural justice. We, therefore, hold that respondent shall not recover any increased trade refuse charges with effect from 2009 without giving reasonable opportunity of hearing to the licencee or persons liable to pay such increased charges. A B

31. After giving our anxious consideration in the matter, we do not find any reason to differ with the view taken by the High Court in passing impugned order. However, we modify the impugned order only by holding that clause (6) of the Circular increasing trade refuse charge by 10 per cent every year from 2009 is highly arbitrary and without any guideline. We, therefore, hold that the increase of trade refuse charge by 10 per cent every year irrespective of the actual escalation or reduction in costs involved or the nature of business carried on by the Licencee etc. violates principles of reasonableness as well as natural justice. Accordingly, we direct that the respondent-authority shall not recover increased trade refuse charge at the rate of 10 per cent with effect from 2009. The actual increase can be ascertained and realized in future but not without giving reasonable opportunity of hearing to the licencee or the persons liable to pay the said increased charges. C D E

32. With the aforesaid modification and directions, these appeals stand disposed of with no order as to costs. F

Kalpana K. Tripathy Appeal Disposed of.