

W.P.No.6913 of 2019 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	09.12.2019, 02.01.2020 & 03.01.2020
DELIVERED ON	:	11.03.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.6913, 6918, 9537, 9544, 10064, 10066, 22026, 23580,
24692, 24694, 26311, 26364, 27767, 27772, 27879, 27882, 33001,
34718, 34725, 34757, 34845, 34861, 34863, 35179, 35181, 35182,
35248, 35333, 35335, 35408, 35682 of 2019

and

W.M.P.Nos.10159, 10166, 21280, 23399, 23402, 24355, 24360,
25664, 25728, 26388, 27300, 27307, 27444, 27446, 33429, 7658,
7660, 7663, 7664, 35473, 35477, 35503, 35609, 35634, 35635,
36237, 36589 of 2019

W.P.No.6913 of 2019:

Chennai Hoardings Association,
rep. by its President K.C.Chandrasekaran,
No.2/52, Abirampuram,
Cittuoragdam, Ambattur,
Chennai-600 053.

... Petitioners

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VS.

1.The Secretary to Government of Tamil Nadu,
Municipal Administration Department,
Fort St. George,
Chennai – 600 009.

2.The Secretary to Government of Tamil Nadu,
Law Department,
Fort St. George,
Chennai – 600 009.

3.The District Collector, Tiruvallur
Master Plan Complex,
NH 205, Tiruvallur,
Tamil Nadu 602 001.

4.The District Collector, Kancheepuram
First Floor,
Collectorate,
Kancheepuram – 631 501.

5.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai-600 003.

.. Respondents

and batch cases.

For Petitioners : Mr.AR.L.Sundaresan
in W.P.Nos.6913 and Senior Counsel
6918 of 2019 for Mrs.A.L.Gandhimathi

For Petitioners in : Mr.Gnanadesikan
W.P.Nos.22026, 23580, Senior Counsel
9537, 9544 of 2019 for M/s.Gnanadesikan Law
Associates

W.P.No.6913 of 2019 etc. batch

For Petitioners in : Mr.A.K.Sriram
W.P.Nos.10064 and for M/s.A.S.Kailasam &
10066 of 2019 Associates

For Petitioners in : Ms.S.P.Arthi
W.P.Nos.24692, 24694,
33001 of 2019

For Petitioners in : Mr.R.Vijayakumar
W.P.Nos.26311, 35179,
35181, 35182, 35248,
35333, 35335 of 2019

For Petitioner : Mr.S.Rajendrakumar
in W.P.No.26364 of
2019

For Petitioners in : Mr.A.Manojkumar
W.P.Nos.27772, 27767,
27882, 27879, 34718,
34725, 34757, 34845,
34861, 34863, 35408,
and 35682 of 2019

For Respondent : Mr.Vijay Narayan
Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader
for the State

Mr.K.Soundararajan
Standing Counsel
for Chennai Corporation

COMMON ORDER

HON'BLE CHIEF JUSTICE

The challenge raised in all these petitions is to Act No.40 of 2018, the Tamil Nadu Municipal Laws (Fifth Amendment) Act, 2018 insofar as it relates to alteration of definition of the word "*hoarding*" as used in (1) Section 326-A of the Chennai City Municipal Corporation Act, 1919; (2) Section 285-A of the Tamil Nadu District Municipalities Act, 1920, which are similar to the amendments brought about under the same Act in Section 410-A of the Coimbatore City Municipal Corporation Act, 1981 and Section 410-A of the Madurai City Municipal Corporation Act, 1971. The said amendment was published on 16.07.2018 with a rider that it shall come into force on such date as the State Government may, by notification, appoint.

2. The State Government has come out with a notification published on 31.01.2019 enforcing the said amendment with effect from 01.02.2019.

3. To appreciate the controversy at the very outset since the amendment is common to all the enactments, we are extracting the amended definition of the word "*hoarding*" as contained in Section 326-A of the Chennai City Municipal Corporation Act, 1919. The same is extracted herein under:

*"(a) "hoarding" means any screen of boards, other than digital banner and placard, at any place, used or intended to be used for exhibiting advertisement, including the frame work or other support, erected, wholly or in part upon or over any land, building, wall or structure, **belonging to the Corporation**, visible to public wholly or partly."*

4. A challenge has been occasioned on account of the phrase "*belonging to the Corporation*" having been included in the definition clause of *hoarding* whereby the place on which a hoarding can now exist has to necessarily belong to the Corporation to the exclusion of any private person at large or any other class of land either belonging to the Union or the State Government. We are mentioning this fact as one of the petitions relates to the setting up of hoarding on railway land belonging to the Union Railways where permission has been granted, but on account of the said

amendment, the request for grant/renewal of licence for setting up of hoarding stands denied to the petitioner.

5. We may at the out set mention that initially the said challenge came to be raised in relation to the very same amendment in respect of Madurai and Coimbatore City Municipal Corporation Acts at the Madurai Bench of this Court in W.P.(MD) Nos.18345, 18346, 18353 and 18366 of 2018. A Division Bench of the Court at Madurai recorded brief reasons on 23.08.2018 for entertaining the petitions and after hearing the parties, passed an interim order on 30.08.2018, which is extracted herein under:

"W.P(MD)No.18345 of 2018 has been filed seeking a writ of Declaration to declare Act No.40 of 2018 – Tamil Nadu Municipal Laws (Fifth Amendment) Act, 2018, published in the Tamil Nadu Government Gazette on 16.07.2018 as unconstitutional insofar as Amendment to Section 410-A of the Coimbatore City Municipal Corporation Act, 1981 and consequently, quash the same as unconstitutional.

2. W.P(MD)No.18346 of 2018 has been filed seeking a writ of Declaration to declare Act No.40 of 2018 – Tamil Nadu Municipal Laws (Fifth Amendment) Act, 2018, published in

the Tamil Nadu Government Gazette on 16.07.2018 as unconstitutional insofar as Amendment to Section 410-A of the Coimbatore City Municipal Corporation Act, 1981 and consequently, quash the same as unconstitutional.

3. Heard the learned Counsel for the parties.

4. The petitioners are running advertising agencies. As the State Government have introduced the Act No.40 of 2018 – Tamil Nadu Municipal Laws (Fifth Amendment) Act, 2018, dated 16.07.2018, to amend the definition of 'hoarding' and also to implement certain other changes to Section 410-A under Chapter XIII-A of Coimbatore City Municipal Corporation Act, 1981, pursuant to which, the definition of 'hoarding' reads as under,

"(a) "hoarding" means any screen of boards, other than digital banner and placard, at any place, used or intended to be used for exhibiting advertisement, including the frame work or other support, erected, wholly or in part upon or over any land, building, wall or structure, **belonging to the Corporation**, visible to public wholly or partly."

the petitioners have come forward with the present writ petitions stating that the aforesaid amendment has completely taken away the rights of the private advertisers to resort to the business of erecting hoardings.

5. It is the grievance of the petitioners that the introduction

of the said amendment is a direct curb of every citizen to practice any trade of his choice inasmuch as it is violative of Article 19(1) (g) of the Constitution of India. Moreover, the amendment to Section 410-A of the Coimbatore City Municipal Corporation Act, 1981, stating that 'any screen of boards, other than digital banner and placard, at any place, used or intended to be used for exhibiting advertisement, including the frame work or other support, erected, wholly or in part upon or over any land, building, wall or structure, belonging to the Corporation, visible to public wholly or partly', is also violative of Article 14 of the Constitution of India.

6. When the lands belonging to the private persons are also taxed for the purpose of displaying any hoarding, the respondents cannot restrict the screening of any board only on the land, building, wall or structure, belonging to the Corporation alone and as a result, no private party or no private advertiser can display any hoarding even in their own lands.

7. It is also argued that though the amendment was introduced to Section 410-A of the Coimbatore City Municipal Corporation Act, 1981, till date, the State Government has not appointed any date from which it shall come into force.

8. This Court, while entertaining these writ petitions on

23.08.2018 and recording brief reason, posted the matters on 30.08.2018 for considering the request of the petitioners to pass interim orders.

9. When the matters are taken up for hearing today, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 3, placing reliance on the copy of Letter No.20090/M.C.I/2018-1, dated 29.08.2018, addressed by the Principal Secretary to Government, Government of Tamil Nadu to the learned Special Government Pleader, Madurai Bench of Madras High Court, Madurai, submitted that the proposal of the Commissioner, Greater Chennai Corporation, Commissioner of Municipal Administration and Director of Town Panchayats, seeking amendment to Chennai City Municipal Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003 and Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003 in accordance with the amendments made to ULB Acts, so as to enable to grant license for the erection of hoardings, in the limits of Greater Chennai Corporation, other Municipal Corporations, Municipalities and Town Panchayats is under consideration of the Government and also will take some more time to finalise the same. Further, the learned Special Government Pleader appearing for the respondents 1 and 3 requested to take up the matters after two weeks as the learned Additional Advocate General is leading him.

10. Since the communication vide Letter No.20090/M.C.I/2018-1,dated 29.08.2018, sent by the Principal Secretary to Government, Government of Tamil Nadu to the learned Special Government Pleader, Madurai Bench of Madras High Court, Madurai, clearly shows that till date, no date has been appointed to give effect to the said amendment made to Section 410-A under Chapter XIII-A of Coimbatore City Municipal Corporation Act, 1981, the respondents cannot interfere with the hoarding business of the private citizens until further orders. Accordingly, the respondents are directed to maintain status quo as on date until further orders.

11. List the matters on **17.09.2018.**"

6. The interim order was extended further after consolidating all the four writ petitions that were instituted at Madurai Bench by the following order on 31.10.2018:

"These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of MR.D.SELVAM for MR.G.THALAIMUTHARASU, Advocate for the petitioner in WP(MD)Nos.18345 & 18346/2018, and MR.ARUL VADIVEL @ SEKAR for Mrs.S.P.ARTHI, Advocate for the Petitioner in WP(MD)Nos.18353 & 18366/2018 and of

W.P.No.6913 of 2019 etc. batch

MR.K.CHELLAPANDIAN, Additional Advocate General assisted by MR.V.R.SHANMUGANATHAN, Special Government Pleader for R1 & R3 in WP (MD)Nos.18345,18346 & 18366/2018 and R1 in WP(MD)No.18353/18, and MR.N.S.KARTHIKEYAN, Advocate for R2 in WP(MD)Nos.18345,18346 & 18353/2018 and MR.R.MURALI, Advocate for R2 in WP(MD)No.18366/2018, the court made the following order:-

Learned Advocate General submitted that counter affidavit filed by the Government is not meeting all the pleas raised by the petitioner in the writ petition. Therefore, some more time be granted for filing additional counter affidavit.

Learned counsel has no objection. Therefore, list this matter in the third week of November 2018. Interim order already granted is extended till then."

7. The State Government contested the matter and after hearing the learned Additional Advocate General, the interim order was modified to the following effect on 10.12.2018:

"Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General, assisted by Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents.

2. Today, when the matters are taken up for hearing, the learned Additional Advocate General appearing for the State sought for clarification with regard to the orders dated 30.08.2018 passed by this Court.

3. After hearing the rival submissions, we pass the following order:

The interim order dated 30.08.2018 passed by this Court, is not a bar for the Government to notify the Amendment made to Section 410-A under Chapter XIII-A of Coimbatore City Municipal Corporation Act, 1981 [W.P(MD)Nos.18345 and 18346 of 2018]; Section 285-A of the Tamil Nadu District Municipalities Act, 1920 [W.P(MD)No.18353 of 2018]; and Section 410-A under Chapter XIII-A of Madurai City Municipal Corporation Act, 1981 [W.P(MD)No.18366 of 2018],

4. At this juncture, the learned Counsel for the petitioners submitted that taking advantage of the clarification, the respondents should not reject the applications pending before them.

5. Whereas the learned Additional Advocate General appearing for the State, on instructions, submitted that the respondents will not reject the pending applications, if they are not rejected so far. Further, he has also stated that the respondents will not interfere with the hoarding business of

the private citizens till the disposal of these writ petitions.

6. The said undertaking of the learned Additional Advocate General appearing for the State is placed on record. The respondents shall also file an affidavit of undertaking to that effect on the next hearing date.

7. List the matters on 21.01.2019."

8. All the present writ petitions at Madras came to be filed thereafter before this Court relying on the interim orders referred to above passed by the Madurai Bench. A Division Bench of this Court on 17.12.2018 passed the following order:

*"Learned Additional Advocate General produced a copy of the order passed by the Madurai Bench in W.P.(MD) Nos.18345, 18346, 18353 and 18366 of 2018 dated 10.12.2018 and sought for further time. The matter stands adjourned by four weeks. **We make it clear that** the order passed by the Madurai Bench would govern the case of the petitioners also."*

9. This was followed by the order dated 12.03.2019, which is extracted herein under:

"In W.P.No.6913 of 2019, Chennai Hoardings Association,

represented by its President, K.C.Chandrasekaran, has sought for a writ of declaration, to declare the impugned Act No.40 of 2018 viz., the Tamil Nadu Municipal Laws (fifth amendment Act), 2018 promulgated vide Notification dated 16.07.2018 published in Tamil Nadu Government Gazette Extraordinary issue No.252, as void, discriminatory, ultra vires and unconstitutional.

2. In W.P.No.6918 of 2019, the very same petitioner has sought for a writ of declaration, to declare the impugned G.O.Ms.No.16 of vide Notification dated 31.01.2019 issued by the 1st respondent which came into force on 01.02.2019, as void, discriminatory, ultra vires and unconstitutional.

3. In W.P.(MD) Nos.18345 of 2018 etc. batch of writ petitions, Madurai Bench of Madras High Court on 10.12.2018 has passed the following order.

"Heard the learned counsel appearing for the petitioner 2 and the learned Additional Advocate General, assisted by Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents.

2. Today, when the matters are taken up for hearing, the learned Additional Advocate General appearing for the State sought for clarification with regard to the orders dated 30.08.2018 passed by this Court.

3. After hearing the rival submissions, we pass the following order:

The interim order dated 30.08.2018 passed by this Court, is not a bar for the Government to notify the Amendment made to Section 410-A under Chapter XIII-A of Coimbatore City Municipal Corporation Act, 1981 [W.P.(MD) Nos.18345 and 18346 of 2018; Section 285-A of the Tamil Nadu District Municipalities Act, 1920 [W.P.(MD) No.18353 of 2018]; and Section 410-A under Chapter XIII-A of Madurai City Municipal Corporation Act, 1981 [W.P.(MD) No.18366 of 2018], respectively.

4. At this juncture, the learned counsel for the petitioners submitted that taking advantage of the clarification, the respondents should not reject the applications pending before them.

5. Whereas the learned Additional Advocate General appearing for the State, on instructions, submitted that the respondents will not reject the pending applications, if they are not rejected so far. Further, he has also stated that the respondents will not interfere with the hoarding business of the private citizens till the disposal of these writ petitions.

6. The said undertaking of the learned Additional

Advocate General appearing for the State is placed on record. The respondents shall also file an affidavit of undertaking to that effect on the next hearing date.

7. List the matters on 21.01.2019."

4. Subsequently, on 17.12.2018 when W.P.Nos.25220 & 25221 of 2018 came up for admission, a Hon'ble Division Bench of this Court [Principal Bench], passed the following order.

"Learned Additional Advocate General produced a copy of the order passed by the Madurai Bench in W.P.(MD) Nos.18345, 18346 , 18353 and 18366 of 2018 dated 10.12.2018 and sought for further time. The matter stands adjourned by four weeks. We make it clear that the order passed by the Madurai Bench would govern the case of the petitioners also."

5. Ms.A.L.Gandhimathi, learned counsel for the instant writ petitioner submitted that similar order be passed protecting the interest of the writ petitioner. Learned counsel further submitted that matters pending before the Madurai Bench of Madras High Court is posted on 25.03.2019.

6. Mr.E.Manoharan, learned Additional Government Pleader takes notice on behalf of respondents 1 to 4 and Mr.K.Soundararajan, learned standing counsel takes notice

on behalf of 5th respondent.

7. Order made in W.P.(MD) No.18345 of 2018 etc. batch of writ petitions dated 10.12.2018, governs the case of the instant writ petitioner also.

8. Post the instant writ petitions on 01.04.2019."

10. The interim order was again continued and made absolute untill further orders vide an order dated 31.07.2019, which is extracted herein under:

"Based on the order made in W.P.(MD).No.18345 of 2018 etc batch of writ petitions, dated 10.12.2018, we granted an interim order, as hereunder:-

"In W.P.No.6913 of 2019, Chennai Hoardings Association, represented by its President, K.C.Chandrasekaran, has sought for a writ of declaration, to declare the impugned Act No.40 of 2018 viz., the Tamil Nadu Municipal Laws (fifth amendment Act), 2018 promulgated vide Notification dated 16.07.2018 published in Tamil Nadu Government Gazette Extraordinary issue No.252, as void, discriminatory, ultra vires and unconstitutional.

2. In W.P.No.6918 of 2019, the very same petitioner has sought for a writ of declaration, to declare the impugned G.O.Ms.No.16 of vide Notification dated 31.01.2019 issued

by the 1st respondent which came into force on 01.02.2019, as void, discriminatory, ultra vires and unconstitutional.

3. In W.P.(MD) Nos.18345 of 2018 etc. batch of writ petitions, Madurai Bench of Madras High Court on 10.12.2018 has passed the following order.

"Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General, assisted by Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents.

2. Today, when the matters are taken up for hearing, the learned Additional Advocate General appearing for the State sought for clarification with regard to the orders dated 30.08.2018 passed by this Court.

3. After hearing the rival submissions, we passed the following order: The interim order dated 30.08.2018 passed by this Court, is not a bar for the Government to notify the Amendment made to Section 410-A under Chapter XIII-A of Coimbatore City Municipal Corporation Act, 1981 [W.P.(MD) Nos.18345 and 18346 of 2018; Section 285-A of the Tamil Nadu District Municipalities Act, 1920 [W.P.(MD) No.18353 of 2018]; and Section 410-A under Chapter XIII-A of Madurai City Municipal Corporation Act, 1981 [W.P.(MD) No.18366 of 2018], respectively.

4. At this juncture, the learned counsel for the petitioners submitted that taking advantage of the clarification, the respondents should not reject the applications pending before them.

5. Whereas the learned Additional Advocate General appearing for the State, on instructions, submitted that the respondents will not reject the pending applications, if they are not rejected so far. Further, he has also stated that the respondents will not interfere with the hoarding business of the private citizens till the disposal of these writ petitions.

6. The said undertaking of the learned Additional Advocate General appearing for the State is placed on record. The respondents shall also file an affidavit of undertaking to that effect on the next hearing date.

7. List the matters on 21.01.2019."

4. Subsequently, on 17.12.2018 when W.P.Nos.25220 & 25221 of 2018 came up for admission, a Hon'ble Division Bench of this Court [Principal Bench], passed the following order.

"Learned Additional Advocate General produced a copy of the order passed by the Madurai Bench in W.P.(MD) Nos.18345, 18346 , 18353 and 18366 of 2018 dated 10.12.2018 and sought for further time. The matter stands adjourned by four weeks. We make it clear that the order passed by the Madurai Bench would govern the case of the petitioners also."

5. Ms.A.L.Gandhimathi, learned counsel for the instant writ petitioner submitted that similar order be passed protecting the interest of the writ petitioner. Learned counsel further submitted that matters pending before the Madurai Bench of Madras High Court is posted on 25.03.2019.

6. Mr.E.Manoharan, learned Additional Government Pleader takes notice on behalf of respondents 1 to 4 and Mr.K.Soundararajan, learned standing counsel takes notice on behalf of 5th respondent.

7. Order made in W.P.(MD) No.18345 of 2018 etc. batch of writ petitions dated 10.12.2018, governs the case of the instant writ petitioner also.

8. Post the instant writ petitions on 01.04.2019."

2. Periodically, the interim order is extended. Mr.E.Manoharan, learned Additional Government Pleader, seeks two more weeks time to file counter.

3. Interim order continuous untill further orders. W.M.P.Nos.10636 and 10637 of 2019, are closed. Liberty is granted to the respondents to seek for vacation of the interim orders, if so desire.

4. Post on 13.08.2019."

11. The matter appears to have been again heard on 09.09.2019, where this Court made the following observations in the order passed on that date:

"The matter in issue pertains to amendments made to the various City Municipal Corporation Acts, Tamil Nadu District Municipalities Act, regarding the erection of hoardings in a

places belong to the local body.

2. The learned counsel appearing for the petitioners would submit that in the light of the amendments, the applications already submitted may be rejected and till the disposal of the said writ petition, the applications can be kept pending.

3. Mr.A.N.Thambidurai who accepts notice on behalf of the respondents on instructions would submit that unless the vires of the said amendment is decided, the applications for erection of a hoarding on a private place cannot be entertained.

4. This Court has considered the rival submissions and also perused the materials placed before it.

*5. A perusal of the order dated 31.07.2019 would disclose that this Court vide interim order dated 10.12.2018 in W.P.(MD).No.18345 of 2018 and etc., batch, has recorded the submission of the learned Additional Advocate General that **the respondents will not interfere with the hoarding business of the private citizens till the disposal of these writ petitions.***

*6. **In the considered opinion of this Court, the said portion of the order dated 31.07.2019 in paragraph no.5 requires modification for the reason that unless and until the said amendments are decided, it may***

not be open to the members of the petitioner Association to erect hoarding on private lands afresh.

7. In the result, there shall be an order of interim direction directing the respondents not to reject the applications already submitted by the members of the petitioner's Association with regard to the erection of hoardings on private lands and however, the respondents need not entertain any fresh applications for the reason that the right of the members of the petitioner's Association to submit application in that regard would depend upon the result of these writ petitions.

8. Call on 01.10.2019. Counter affidavit of the respondents with supporting documents by then."

12. The writ petitions came up before us on 11.11.2019 and we had adjourned the matter on the request of learned counsel for the State. The order dated 11.11.2019 is extracted herein under:

"The contention raised is that the amendment brought about in Section 326-A of the Chennai City Municipal Corporation Act, 1919, and analogous Acts impinges upon the fundamental rights guaranteed under Article 19(1)(g) and Article 14 of the Constitution of India on the ground that the amendment seeks to monopolize the setting up of hoardings only on land belonging to the Municipal

Corporation and therefore, it correspondingly prohibits such structure being erected on any private land, which action is not only discriminatory but there is no nexus established with any rational object sought to be achieved with regard to setting up of hoardings. Consequently, it is urged that the phrase "land belonging to the Corporation" is liable to be struck down in order to remove this anomaly.

2. Learned counsel for the State submits that the learned Additional Advocate General has to lead arguments in this case and therefore, he prays for a short adjournment.

3. The issue being one of seminal importance, which also appears to be urgent keeping in view the nature of the restrictions imposed, we find it expedient to adjourn the matter for 27.11.2019, as prayed for."

13. The arguments commenced on 03.12.2019, but could not conclude, on which date, various contentions of the parties were heard by us and recorded as herein under:

"Heard Sri.AR.L.Sundaresan, Sri.M.Gnanadesikan, Sri.A.K.Sriram and M/s.S.P.Aarthi, learned counsel for the petitioners and Mr.Vijay Narayan, learned Advocate General on behalf of the State.

2.The issue, which has arisen for consideration, is the

challenge raised to the amendment brought about in Section 326-A (a) of the Chennai City Municipal Corporation Act, 1919 and other analogous amendments on the issue of permitting the setting up of hoardings only and exclusively on land belonging to Municipal Corporation. The petitioners contend that this amounts to creating a monopoly and prohibiting any such activity on private land for no valid justification. The legislation impugned reflects manifest arbitrariness as well as being discriminatory, thereby violating Article 14 of the Constitution of India and also interfering with the fundamental rights guaranteed under Article 19 (1)(a) and 19(1)(g) of the Constitution of India. It has been urged on behalf of the petitioners that the justification for bringing about the amendments on the ground of ensuring greater public safety, and to control unregulated and mushrooming of hoardings coupled with an object of generating revenue for the municipal corporations, are no valid or cogent reasons so as to reflect a nexus with the rationality of the object sought to be achieved by permitting such hoardings only on land belonging to Municipal Corporation.

3. One of the submissions raised by the learned counsel is that there were ample protections contained in the Act itself including penal provisions for the regulation and grant of licence of private persons including refusing to do so and therefore, when such mandatory provisions with plenary powers are available, there appears to be no justification for

clamping a total prohibition on the setting up of hoardings on private land. Learned counsel have cited certain decisions to substantiate their submissions contending that the impugned provision cannot surpass the twin test of arbitrariness and discrimination as enshrined under Article 14 of the Constitution and even otherwise, is unsustainable as it directly violates fundamental rights of the petitioners to carry on their trade and profession. It has also been urged that the issue of aesthetics, pendency of court cases and other such arguments cannot be saved under the cloak of a policy, so as to denude the petitioners of their fundamental rights guaranteed under the Constitution.

4. On the other hand, the learned Advocate General has invited the attention of the Court to the various provisions contained under Chapter XII-A of the Act and has commenced his arguments by contending that issues relating to public safety being of prime importance which includes causing hindrance to traffic, danger to pedestrians, safety of buildings and aesthetics are all matters of policy decision, which are sustainable on a rational basis and therefore, the introduction of the impugned amendment only amounts to limiting the participation by defining the place for setting up of hoardings and not prohibiting the petitioners from carrying on their trade and business. He has advanced his submissions contending that such restrictions being in larger public interest, the same cannot be struck down on the plausible arguments that have been

advanced by the petitioners.

5.The arguments could not conclude today, due to paucity of time and therefore, let the matter come up again on 09.12.2019.

Put up on 09.12.2019 as the first case."

14. The matter was finally heard on 09.12.2019 and the judgment was reserved.

15. Thus, from the orders quoted herein above, it is apparent that a contest has been raised by the private players, which include private owners of land, who contend that right to monopolize the setting up of hoardings which in turn creates monopoly in the Municipal Corporation to the exclusive trade and business of advertising is violative of Article 19(1)(g) read with Article 14 of the Constitution of India inasmuch as it completely prohibits the trade and profession of the setting up of hoardings and advertising on private lands/private premises. The impugned amendment which confines the setting up of hoardings only on the land belonging to

the Corporation is therefore the bone of contention that has been advanced in these batch of writ petitions.

16. The arguments on behalf of the petitioners have been led by learned Senior Counsel Shri AR.L.Sundaresan, followed by the submissions of Shri Gnanadesikan, learned Senior Counsel; Shri A.K.Sriram; Smt.S.P.Arthi; Shri R.Vijayakumar; Shri S.Rajendrakumar; and Shri A.Manojkumar, who have canvassed that the amendment is not only arbitrary and irrational, but has no rational nexus with any object that may be sought to be achieved, inasmuch the Act itself is inclusive of all provisions including the power to restrict which can be imposed on setting up of hoardings at any particular place. The extent of powers that are available to the Municipal Corporations and Municipal Bodies is sufficient to protect any apprehended hazard or environmental violation or being contrary to the aesthetics or ambience of a town or city.

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17. It is urged that in spite of specific provisions available to impose restrictions, the amendment seeks to virtually oust all

Government and private persons seeking license to set up hoardings which directly affects the business of advertisement where an advertiser is compelled to set up hoardings only on the place belonging to the Corporation that directly hits the right and freedom of profession of advertisement, inasmuch as no advertising agency will now be able to avail any benefits of private person or even a Government or semi-Government undertaking thereby excluding even the Government agencies from setting up hoardings. This being the crux of challenge, we may now explore the background in which the aforesaid amendment was brought about before considering the other arguments advanced on behalf of the petitioners.

18. It appears that traffic hazards had led to certain accidents and this Court had also noticed such facts, as a result whereof the Municipal Corporations had undertaken an exercise to meet the exigencies of law including such cases where this Court had imposed penalties on the Municipal Corporation and also compensation to the legatees of commuters who lost their lives on

account of hazardous placing of hoardings including digital advertisements. A research study mechanism was therefore set up for assessing an Outdoor Advertising Policy in the Greater Chennai Corporation and accordingly, a policy for urban local bodies was framed that came to be accepted by the Municipal Administration and Water Supply Department, Government of Tamil Nadu vide a Government Order dated 05.06.2018. The said policy after taking into account various exigencies recorded its review through the conclusions that are being extracted herein under.

19. The Government Order (4D) No.2, Municipal Administration & Water Supply (MC.1) Department, dated 05.06.2018 is reproduced for ready reference:

ABSTRACT

Outdoor Advertising Policy – Formulated by Greater Chennai Corporation (GCC), Commissioner of Municipal Administration (CMA) & Director of Town Panchayats (DTP) – Approved – Orders issued.

*Municipal Administration & Water Supply (MC.1) Department
G.O (4D) No.2 Dated 05.06.2018*

Vilambi, Vaikasi – 22

Tiruvalluvar Aandu, 2049

Read:-

1. From the Commissioner, Greater Chennai Corporation Letter R.D.C.No.G.4/01186/2018, Dated 27.02.2018 and 10.04.2018
2. From the Commissioner of Municipal Administration Letter Roc No.2868/2018/TP.2, Dated 27.02.2018 and 10.04.2018
3. From the Director of Town Panchayats Letter Roc No.2777/2018/C.5, Dated 05.03.2018 and 10.04.2018.

ORDER:-

The Commissioner, Greater Chennai Corporation, Commissioner of Municipal Administration & Director of Town Panchayats, in their letters first to third read above, have stated that outdoor advertising has emerged over time to be one of the most durable and convenient forms of commercial communication. Therefore, a carefully crafted regulatory framework is necessary now to encourage the business of outdoor advertising. Taking this into account, they have proposed Outdoor Advertising Policy that fulfills both regulations as well as revenue structure and sent it to Government for approval.

2. The Government, after careful examination, approve the Outdoor Advertising Policy formulated by the Commissioner, Greater Chennai Corporation, Commissioner of Municipal Administration & Director of Town Panchayats

as annexed to this order.

3. At present, the erection of hoardings is governed by the Chennai City Municipal Corporation Act, 1919 and other Urban Local Bodies Acts and rules framed thereunder. The Commissioner, Greater Chennai Corporation, Commissioner of Municipal Administration & Director of Town Panchayats are therefore requested to send necessary proposals to Government for amending the Chennai City Municipal Corporation Act, 1919 and other Urban Local Body Acts and Rules (for framing a new Rules, if necessary, in supersession of existing Rules) in accordance with the Outdoor Advertising Policy approved by the Government.

//BY ORDER OF THE GOVERNOR//

HARMANDER SINGH

PRINCIPAL SECRETARY TO GOVERNMENT

To

The Commissioner,

Greater Chennai Corporation, Chennai-600 003.

The Commissioner of Municipal Administration,
Chepuak, Chennai – 600 005.

The Director of Town Panchayats, Kuralagam, Chennai –
600 108.

Copy to:-

The Hon'ble Chief Minister Office, Chennai – 600 009.

The Hon'b;e Deputy Chief Minister Office, Chennai – 600
009.

The Senior Personal Assistant to Minister (Municipal Administration & Rural Development, Implementation of Special Programme), Chennai – 600 009.

The Director of Local Fund Audit, Chennai – 600 108.

The Accountant General (A&E), Chennai – 600 018.

The Private Secretary to Principal Secretary to Government, Municipal Administration & Water Supply Department, Chennai-9.

The Municipal Administration & Water Supply (O.P.2) Department, Chennai – 600 009.

//Forwarded By order//

Section Officer"

20. The extract of the review of the policy recording conclusions, which has been adopted through the Government Order, is reproduced herein under:

"Detailed review, as above, of policies in other States, EPCA approved policies, studies conducted globally in the last 5 to 7 years, leads to the conclusion that:

- 1. OADs do have high potential for causing distraction, and/or, obstruction to see traffic signs or road conditions ahead, to drivers if their placement, format, size, illumination, content and visibility are not regulated strictly.*
- 2. OADs must also contribute positively towards urban / city aesthetics.*

3. While outdoor advertisements do bring revenue to the city, any policy must be driven by considerations of safety and aesthetics.
4. An advertising device may be considered a traffic hazard
 - i. If it interferes with road safety or traffic efficiency.
 - ii. If it interferes with the effectiveness of a traffic control device (eg. Traffic light, stop or give way sign).
 - iii. Distracts a driver at a critical time (eg. Making a decision at an intersection).
 - iv. Obscures a driver's view of a road hazard (eg. At crossing or traffic red lights in the road).
 - v. Gives instructions to traffic to "stop", "half" or other (i.e. Traffic Read Light).
 - vi. Intimidates a traffic control device.
 - vii. Is a dangerous obstruction to road or other infrastructure, traffic pedestrians, cyclists or other road-users.
 - viii. Is in an area where there are several devices and the cumulative effect of those devices may be potentially hazardous.
 - ix. If situated at locations where the demands on drivers' concentration due to road conditions are high such as major intersections.

Subject to regulations detailed in subsequent sections,

displays may be installed only on purely commercial or industrial private property or on government / municipality property. In case of latter, allocations will always necessarily be after due process of public tender, executed by concerned authority as per norms.

The Policy aims to discourage placing OADs on roof-tops. This is based on various considerations including that of complaints and enforcement, besides public safety – in addition to aesthetic aspects.

The policy also aims to encourage the Outdoor advertising industry in moving towards usage of Green Energy for the Outdoor Advertising Display Devices.

This policy proposes standardization of sizes as outlined in following sections. These need to be strictly maintained for both ease of business and also for improved aesthetics.

ULBs shall adopt this Policy where there are not regulations currently, as well as those with existing regulations, subject to amendment of their respective provisions.

The basic principle that must be upheld in

implementation, and any subsequent amendments that may be made to these regulations, is that size of hoarding displays permitted must be proportionate to the width of the roads on which sites are proposed. As such, it is proposed that the following over-riding principle be followed while finalizing locations:

- a) To permit only hoardings, ground or wall mounted, of maximum size 20 ft x 10 ft on roads that are 4 lanes i.e. 2 lanes on either side with dual carriage ways with total road width of 50 feet.
- b) To permit hoardings of maximum size 30 ft x 15 ft and all other OAD devices on roads which are wide i.e. 6 lanes or more, i.e. 3 lanes on either side with dual carriage ways & with pavements of at least 10' on either side, total road width of 80 ft.
- c) To permit hoardings of maximum size 40 ft x 20 ft and all other OAD devices on roads, which are wider i.e. Total road width, is more than 120 ft.
- d) Not to permit "double-deckers" i.e. two boards displaying two different advertisements with one directly on top of the other.
- e) Not to permit hoardings at the corner of the road or street, street junction and 100 mtrs from the junction.
- f) Not to permit hoardings in front of educational Institutions, places for worship, historical places, hospitals (with inpatients)."

21. The objects and reasons for bringing about the amendment whereby the exclusive provision has been made for setting up of the hoardings only on a place belonging to the Corporation is sought to be drawn from the aforesaid conclusions and for better appreciation, we have also gone through the details of the policy that has been placed before us in the additional typed set of papers-II tendered on behalf of the petitioners.

22. By the time the said policy was accepted by the State Government through the aforesaid Government Order, applications had been filed by the petitioners and other similarly situate stakeholders, but their renewal applications and request for grant of licences were kept pending. One writ petition was filed by M/s.Focus Media, who is also one of the petitioners herein, being W.P.No.15477 of 2018, in which a learned Single Judge of this Court issued a mandamus directing the Greater Chennai Corporation to consider the application of the petitioner and pass appropriate orders on merits after affording an opportunity of

hearing within a specified period of time and further directed that till such time, the respondent Corporation shall not take any coercive action against the petitioner.

23. It appears that the impugned amendment was published on 16.07.2018 and the applications came to be rejected on 12.09.2018. The notification for enforcing the Act with effect from 01.02.2019 came to be published on 31.01.2019. Prior to the publication of the notification of enforcement, the orders passed by the Madurai Bench have already been extracted herein above and after publication of the notification, the orders passed by this Court have also been reproduced and are quoted above.

24. Advancing the submissions on behalf of the petitioners, Shri AR.L.Sundaresan, learned Senior Counsel submits that there is a non-existent rationale inasmuch as instead of increasing revenue, the non-availability of premises at appropriate places will itself deny the setting up of hoardings and advertisements which will ultimately result in a loss of heavy revenue to the Corporation. Referring to

the counter-affidavit filed on behalf of the respondent, it has been urged that the defence set out is that mushrooming of hoardings in an uncontrolled and unregulated manner had compelled the State Government to bring about the amendment which is no valid or legal excuse, inasmuch as in spite of penal and restrictive provisions contained in the various enactments which empower Municipal Corporations and Local Bodies to take action on account of any violation, if are not being enforced or implemented by the Municipal Bodies, cannot be a ground to bring about the amendment to deny total opportunity of participation to the rest of the world.

25. It is urged that by creating an exclusive class of premises belonging to the Municipal Corporation, the respondents have discriminated private entrepreneurs and other Government and semi-Government bodies in spite of the fact that premises belonging to a private person will be more advantageous as against the place provided by the Municipal Corporation without causing any hazard. By limiting the availability of the premises, the legislature has completely omitted to realise the distinction between a

regulatory and prohibitory law that impinges upon the fundamental rights guaranteed under Part-III of the Constitution of India, particularly, on the facts and the nature of the trade presently involved. It is urged that this trade is not *per se* pernicious as compared with other trades like that of liquor or where the State Government enjoys a sovereign power like Mines and Minerals, and therefore to prohibit the setting up of hoardings and thereby denying advertisements on private land has no rationality behind it. The impugned amendments discourage a valid and legal trade by prohibiting it and that directly impinges the fundamental rights guaranteed to the petitioners for carrying their trade and occupation. Several judgments have been relied upon by the petitioners to contend that such complete exclusion has to be struck down as *ultra vires*. Merely because the Municipal Corporation is unable to enforce its own restrictions and laws cannot be a ground to repeal a provision which was otherwise constitutional and could be saved by the Rules of interpretation.

26. It is further submitted that the excuse of restriction of a

space as being exercised to control mushrooming of hoardings is an imaginative excuse in stead of placing reasonable restriction for the setting up of hoardings without applying mind to any individual request for setting up of hoardings.

27. Responding to the said submissions, learned Advocate General contends that this is not a prohibition and rather it regulates setting up of hoardings only and does not impinge upon the right of any person who is in the trade and business of advertisement. This distinction has to be understood inasmuch the impugned amendment does not prohibit any advertisement but rather defines only the places where hoardings can be set up for advertisement, which is in consonance with the policy that was adopted after consulting experts and after examining such material that was relevant for the said purpose. He contends that this is not an exercise in haste, nor it has been done without any valid reason, but is an outcome of an exercise that is based on rationality and keeping in view public interest at large.

28. The learned Advocate General has then invited the attention of the Court to the exercise that was undertaken before bringing about the impugned amendment, which is in public interest in order to prevent the indiscriminate mushrooming of advertisements. He submits that revenue earning is not the only interest of the State, which is to be balanced with public interest, which is largely involved in the present context where environmental aspect, the aesthetic and ambience of a township and the possibility of traffic hazards have all been cumulatively taken into account before enforcing the provisions. He contends that it had become practically uncontrollable, inasmuch as with the given infrastructure and the legal back up. The regulation of setting up of hoardings was becoming unmanageable and consequently, to provide a uniform pattern a stringent measure had to be taken which does not prohibit the setting up of hoardings, nor does it in any way impinge upon the fundamental rights of freedom and expression or trade and profession so as to ban advertising. He submits that the advertising agencies do not have any fundamental right to set up an advertisement at a place of their choice.

29. It is also urged that by reducing and confining the location of hoardings, the exercise of control over unregulated hoardings would be more effective and simultaneously the realization of revenue by inviting bids for hoardings as per the new method will consolidate the revenue of the Municipalities. He therefore submits that there are no competing fundamental rights which are being impinged and therefore, there is no constitutional or legal violation so as to invite the issuance of a writ as prayed for.

30. The challenge basically is to the restriction of the choice of land "*belonging to the Corporation*" that has been fixed under the impugned provisions, which the petitioners allege to be arbitrary, irrational and there being no reasonable nexus with the object sought to be achieved. They contend that it is violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India.

31. It may be pointed out that we have three sets of petitioners before us, namely the service providers who obtain

licence to set up the hoardings, the advertisers who are engaged in the business of advertising, and the land owners – private or otherwise (including Government land). Their combined contention is that this amounts to taking away and completely prohibiting the right of a land owner – private or otherwise to enjoy the utilization of his own land that too even for no rational basis and also prohibiting advertisements thereby violating fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India. By incorporating the words "*belonging to the Corporation*" in the impugned provisions, there is a total exclusion of all other lands – private or otherwise, which amounts to a prohibition and, therefore, travels beyond regulation and reasonable restriction. This also tends to create a monopoly by extending the benefit of setting up of hoardings only on land belonging to the Municipal Corporation. This exclusive preference clearly amounts to reserving property rights to be enjoyed in respect of a particular trade or business into the hands of the Municipal Corporation. It is also the contention of the petitioners that once this system is introduced, it will generate the springing up of cartels that will exclusively take over the business of

hoardings, thereby compromising with the very object of a free trade and practice of profession, violating Articles 14 and 19 of the Constitution of India.

32. It is also contended that the setting up of hoardings is clearly protected under the provisions of the Act itself and inviting the attention of the Court to the Chennai City Municipal Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003, it is urged that the grant of licence is clearly regulated, where the service provider has to compulsorily obtain a no objection certificate from the owner of the land, or from the State or the Central Government Department, or from the Commissioner of the Corporation, if the hoarding is to be erected on their land. The place of putting of the hoarding and its size are all governed by the Rules. There is a power of cancellation as well. The unauthorized or objectional hoarding can be removed by the Commissioner and the cost can be recovered from the owner of such hoarding. There is a clear restriction on grant of licence as per Rule 10 of the 2003 Rules. Not only this, inspection of hoardings is

to be made periodically by the Commissioner or any officer authorized by him under Rule 18 to find out as to whether the hoardings are in accordance with the Rules and the terms and conditions of the licence, with powers to the Commissioner to take action in that regard.

33. For this, reference to Chapter XII-A of the Chennai City Municipal Corporation Act, 1919 can be made and the provisions therein are *pari materia* in respect of other Corporations as well. Section 326-B prohibits the erection of hoardings without obtaining a licence from the Commissioner. The power to cancel or suspend a licence is there in Section 326-D. The power to remove unauthorized hoardings is contained in Sections 326-E and 326-F and the power to exempt is provided for under Section 326-G, with provisions of appeal and penalty. Apart from this, there is a prohibition of erection of certain hoardings, digital banners or placards under Section 326-J, particularly with regard to being hazardous and being disturbing to traffic movement. Thus, a complete control right from the permission to grant licence and to

its erection and there being adequate measures already in place, the petitioners contend that the idea to locate the hoarding only on land belonging to the Municipal Corporation was absolutely unnecessary when the authorities have full and complete control in restricting the placing of hoardings if it is against public interest, is otherwise against aesthetics, causes disturbance to traffic, is meant to protect buildings, or otherwise cannot be put up for any other valid reason.

34. The contention is that the situs of the hoarding can be fully controlled by either accepting or rejecting a grant of licence, by taking all precautionary measures in order to avoid any public inconvenience, damage or hazard or any other environmental inconvenience.

35. The submission, therefore, on behalf of the petitioners is that this choice of land can always be controlled and there was no necessity of creating a separate class exclusively of lands belonging to the Corporation, which is nothing else but restricting the entire

trade of setting up of hoardings and advertisement into the hands of the Municipal Corporation, through a selected few, to the exclusion of individual private owners of land at large. This also impedes the setting up of hoardings and advertisements by organization like the Railways whose land is governed by a Central enactment and cannot be subjected to such restrictions by Municipal Laws to their total exclusion, as revenue is earned by the Railways as well by such advertisement. This, therefore, prevents the fostering of competitive trade and profession which violates Article 19(1)(g) of the Constitution of India, and also prevents the placing of advertisements which in a way impedes the right of information to be received by the public at large thereby violating Article 19(1)(a) of the Constitution of India. To say the least, the action being arbitrary, with no rational nexus to the object sought to be achieved, it is also violative of Article 14 of the Constitution of India.

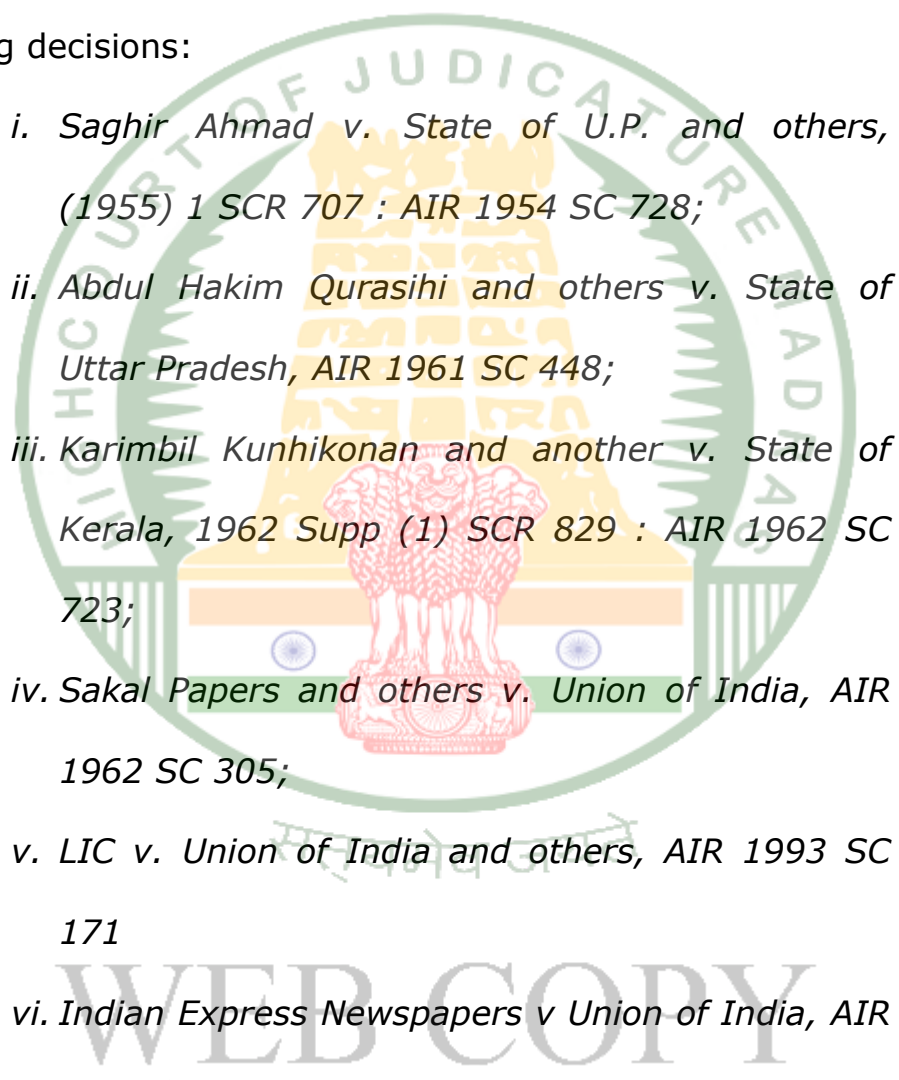
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36. Mr.AR.L.Sundaresan, learned Senior Counsel, in support of his submissions has cited the following decisions:

- i. *Deepak Sibal v. Punjab University and another*,
(1989) 2 SCC 145;
- ii. *The Tamil Nadu Outdoor Advertising Association
v. Government of Tamil Nadu, rep. by its
Secretary, Municipal Administration & Water
Supply Department and others*, 2001 (2) CTC
103;
- iii. *State of Tamil Nadu and another v.
K.Vinayagamurthy*, 2002 (3) CTC 257;
- iv. *Secretary to Government, T.N. and another v.
K.Vinayagamurthy*, (2002) 7 SCC 104;
- v. *Uttar Pradesh Power Corporation Limited v.
Ayodhya Prasad Mishra and another*, (2008) 10
SCC 139;
- vi. *State of Maharashtra and another v. Indian Hotel
and Restaurants Association and others*, (2013)
8 SCC 519;
- vii. *Advocates' Forum for Social Justice, rep. by its
President, K.Balu v. State of Tamil Nadu, rep. by*

*its Secretary to Government, Department of Law
and others, (2017) 1 MLJ 81.*

37. Mr.B.Gnanadesikan, learned Senior Counsel, has cited the following decisions:

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- i. Saghir Ahmad v. State of U.P. and others, (1955) 1 SCR 707 : AIR 1954 SC 728;*
 - ii. Abdul Hakim Qurasahi and others v. State of Uttar Pradesh, AIR 1961 SC 448;*
 - iii. Karimbil Kunhikonan and another v. State of Kerala, 1962 Supp (1) SCR 829 : AIR 1962 SC 723;*
 - iv. Sakal Papers and others v. Union of India, AIR 1962 SC 305;*
 - v. LIC v. Union of India and others, AIR 1993 SC 171*
 - vi. Indian Express Newspapers v Union of India, AIR 1986 SC 515;*
 - vii. Odysee Communication Pvt. Ltd. v. Lok Vidyan*

Sanghatana, CDJ 1988 SC 255;

viii.Tata Press Ltd. v. Maha Nagar Telephone Nigam Limited, CDJ 1995 SC 533;

ix. N.P.Narayana Bhat v. State of Tamil Nadu, CDJ 2001 SC 262;

x. Novva ADS v. Secretary, Dept. of Municipal Administration and Water Supply and another, CDJ 2008 SC 720;

xi. K.Kanagaraj v. District Collector, Chennai, 2006 (4) MLJ 1033;

xii.Subramanian Swamy v. Director General Bureau of Investigation and another, (2014) 8 SCC 682;

xiii.Cellular Operators Association of India and others v. TRAI, (2016) 7 SCC 703;

xiv.Xavier's Residency and another v. State of Kerala and others, W.P.(C) No.10581 of 2012, Decided on 24.07.2012, (Kerala High Court)

xv.Key Centre, rep. by Partner v. Authorised Officer and another, W.A.No.1284 of 1991, Decided on

25.7.1996, (Madras High Court);

xvi. W.P.No.36773 of 2018, decided on 12/07/2019

(Karnataka High Court);

xvii. Hindustan Construction Company Limited and

another v. Union of India and others, W.P.(C)

No.1074 of 2019, Decided on 27.11.2019 (Apex Court)

38. Mr.A.K.Sriram, learned counsel has invited the attention of the Court to the judgment in the case of *Rashbihari Panda and others v. State of Orissa*, (1969) 1 SCC 414.

39. Learned counsel for the respondent Railways has cited the judgment in the case of *Union of India v. Municipal Corporation of Greater Mumbai and others*, CDJ 2017 BHC 1831.

40. At the outset, we may first rationalize the object and the reason for the introduction of this amendment restricting the setting up of hoardings only on the land belonging to the Municipal

Corporation.

41. There can be no doubt that a regulation can be made as to the choice or preference or priority of setting up of hoardings and, therefore, a situs to place a hoarding can be determined by the Municipal Corporation before granting any such licence. The question is whether such hoardings can only be placed on the land of the Municipal Corporation to the exclusion of all others. The impugned amendment blocks the enjoyment of private property or even property of Government Departments, including Railways and others, from setting up of hoardings. For this, we may refer to the Government Order dated 5.6.2018 through which a policy relating to the setting up of hoardings came to be formulated with the aid of an Expert Committee. We have already extracted the said policy in paragraph (20) herein above and we have highlighted the recommendation that display may be installed only on purely commercial or industrial private property or on government/municipality property. Thus, both the options are indicated therein. The restrictions have also been defined in the

said policy, which aims to discourage placing hoardings at roof tops and other outdoor advertising sites. The said policy did give this suggestion, but it did not suggest total prohibition of display on commercial or industrial private property or even on government property like that of the Railways.

42. On this, we had invited the argument of the learned Advocate General, who contends that this huge mushrooming of hoardings had led to the placing of restrictions and there being an inadequacy of infrastructure as well as a regular day-to-day involvement in removal of unauthorized hoardings, that the amendment was thought proper and justified to ban hoardings at all other places except in the land belonging to the Municipal Corporation. For this, the learned Advocate General has relied on the following decisions:

i. J.Y.Kondala Rao v. Andhra Pradesh State Road Transport Corporation, (1961) 1 SCR 642 : AIR 1961 SC 82;

ii. Akadasi Padhan v. State of Orissa and others,

1963 Supp (2) SCR 691 : AIR 1963 SC 1047;

iii. *Municipal Committee, Amristsar and others v.*

State of Punjab and others, (1969) 1 SCC 475;

iv. *M/s.New Bihar Biri Leaves Company and others*

v. State of Bihar and others, (1981) 1 SCC 537
(Paras 25 – 31);

v. *State of Tamil Nadu v. M/s.Hind Stone and others*, (1981) 2 SCC 205;

vi. *S.Kandaswamy Chettiar v. State of Tamil Nadu and another*, (1985) 1 SCC 290 (**Paras 6, 8, 9**)

vii. *Adarsh Travels Bus Service and another v. State of U.P. and others*, (1985) 4 SCC 557 (**Paras 3, 4, 8**)

viii. *Sri Srinivasa Theatre and others v. Government of Tamil Nadu and others*, (1992) 2 SCC 643

(**Paras 9 – 11**)

ix. *Indian Drugs & Pharmaceuticals Ltd. and others v. Punjab Drugs Manufacturers Association and others*, (1999) 6 SCC 247, (**Paras 9 – 16**)

- x. *P.Narayana Bhat v. State of Tamil Nadu and others*, (2001) 4 SCC 554;
- xi. *Novva Ads v. Secretary, Department of Municipal Administration and Water Supply and another*, (2008) 8 SCC 42;
- xii. *Marudhar Kesari Jain College for Women v. Government of Tamil Nadu and others*, 2010 SCC OnLine Mad 4133 (**Para 7**)
- xiii. *Subramanian Swamy v. Director, Central Bureau of Investigation and another*, (2014) 8 SCC 682, (**Paras 38 – 49**)
- xiv. *Montfort Academy Matriculation Hr. Sec. School v. The Secretary, Department of Municipal Administration and Water Supply Department and others*, W.P.Nos.18008 of 2019 etc. batch, decided on 13.09.2019 (**Paras 27 – 33**).

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43. In order to examine the aforesaid contentions, we may refer to the constitutional provisions and the decisions cited by the

learned Advocate General in this regard.

44. The question as to whether the State has the authority to legislate a law for carrying on a particular public service to the exclusion of all citizens came up for consideration of the Apex Court in the case of *J.Y.Kondala Rao v. Andhra Pradesh State Road Transport Corporation* (supra). In a challenge raised to the exclusion of private operators under a Scheme, the Apex Court held that the law can provide for carrying on a service to the exclusion of all the citizens, after having considered the impact of Article 19(1)(g) and the restriction by way of a monopoly as envisaged under Article 19(6)(ii) of the Constitution of India. We may extract Article 19(6)(ii) of the Constitution herein under:

"Article 19. Protection of certain rights regarding freedom of speech, etc.

*(1) to (5) ****

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause,

and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

*(i) ****

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

45. The next decision relied on by the learned Advocate General in the case of *Akadasi Padhan v. State of Orissa and others* (supra) is exhaustive and illustrative on the interplay of these Articles vis-a-vis the power of the State to create monopolies. For this, we may gainfully extract paragraphs (11) to (29) of the said decision:

"11. Before proceeding to examine the merits of these contentions, it is relevant to recall the genesis of the amendment introduced by the Constitution (First Amendment) Act, 1951. Soon after the Constitution came into force, the impact of socio-economic legislation, passed by the legislatures in the country in pursuance of their welfare policies, on the fundamental rights of the citizens in respect of property came to be examined by courts, and the Articles on which the citizens relied were 19(1)(f) and (g)

and 31 respectively. In regard to State monopolies, there never was any doubt that as a result of Entry 21 in List III both the State and the Union Legislatures were competent to pass laws in regard to commercial and industrial monopolies, combines and trusts, so that the legislative competence of the Legislatures to create monopolies by legislation could not be questioned. But the validity of such legislation came to be challenged on the ground that it contravened the citizens' rights under Article 3(1)(g). As a typical case on the point, we may refer to the decision of the Allahabad High Court in *Moti Lal v. Government of the State of Uttar Pradesh* [(1951) I All 269] . The result of this decision was that a monopoly of transport sought to be created by the U.P. Government in favour of the State operated Bus Service, known as the Government Roadways, was struck down as unconstitutional, because it was held that such a monopoly totally deprived the citizens of their rights under Article 19(1)(g). As a result of this decision it was realised by the legislature that the legislative competence to create monopolies would not necessarily make monopoly law valid if they contravened Article 19(1). That is why Article 19(6) came to be amended. Incidentally, it may be of interest to note that about the same time, the impact of legislative enactments in regard to acquisition of property on the citizens' fundamental rights to property under Article 19(1)(f) also came for judicial review and the decisions of Courts in respect of the acquisition laws in turn led to the amendment of Art 31 on two occasions; firstly

when the Constitution (First Amendment) Act was passed in 1951 and secondly, when the Constitution (Fourth Amendment) Act was passed in 1955.

12. Article 19(6) as amended reads thus:

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes; or prevent the State from making any law imposing; in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation trade or business, or
(ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

It would be noticed that the amendment provides, inter alia, that nothing contained in Article 19(1)(g) will prevent the State from making any law relating to the carrying on by the State of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or

otherwise; and this clearly means that the State may make a law in respect of any trade, business, industry, or service whereby complete monopoly could be created by which citizens are wholly excluded from the trade, business, industry or service in question; or a law may be passed whereby citizens are partially excluded from such trade, business, industry or service; and a law relating to the carrying on of the business either to the complete or partial exclusion of citizens will not be affected because it contravenes Article 19(1)(g). The question which arises for our decision is; what exactly is the scope and effect of this provision?

13. In attempting to construe Article 19(6), it must be borne in mind that a literal construction may not be quite appropriate. The task of construing important Constitutional provisions like Article 19(6) cannot always be accomplished by treating the said problem as a mere exercise in grammar. In interpreting such a provision, it is essential to bear in mind the political or the economic philosophy underlying the provisions in question, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem. With the rise of the philosophy of Socialism, the doctrine of State ownership has been often discussed by political and economic thinkers. Broadly speaking, this discussion discloses a difference in approach. To the socialist, nationalisation or State ownership is a matter of principle and its justification is the

general notion of social welfare. To the rationalist, nationalisation or State ownership is a matter of expediency dominated by considerations of economic efficiency and increased output of production. This latter view supported nationalisation only when it appeared clear that State ownership would be more efficient more economical and more productive. The former approach was not very much influenced by these considerations, and treated it as a matter of principle that all important and nation-building industries should come under State control. The first approach is doctrinaire, while the second is pragmatic. The first proceeds on the general ground that all national wealth and means of producing it should come under national control, whilst the second supports nationalisation only on grounds of efficiency and increased output.

14. The amendment made by the Legislature in Article 19(6) shows that according to the Legislature, a law relating to the creation of State monopoly should be presumed to be in the interests of the general public. Article 19(6)(ii) clearly shows that there is no limit placed on the power of the State in respect of the creation of State monopoly. The width of the power conferred on the State can be easily assessed if we look at the words used in the clause which cover trade, business, industry or service. It is true that the State may, according to the exigencies of the case and consistently with the requirements of any trade, business, industry or service, exclude the citizens either wholly or partially. In other

words, the theory underlying the amendment in so far as it relates to the concept of State monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which Socialism accepts. That is why we feel no difficulty in rejecting Mr Pathak's argument that the creation of a State monopoly must be justified by showing that the restrictions imposed by it are reasonable and are in the interests of the general public. In our opinion, the amendment clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public, so far as Article 19(1)(g) is concerned.

15. The amendment made in Article 19(6) shows that it is open to the State to make laws for creating State monopolies, either partial or complete, in respect of any trade, business, industry or service. The State may enter trade as a monopolist either for administrative reasons, or with the object of mitigating the evils flowing from competition, or with a view to regulate prices, or improve the quality of goods, or even for the purpose of making profits in order to enrich the State ex-chequer. The Constitution-makers had apparently assumed that the State monopolies or schemes of nationalisation would fall under, and be protected by, Article 19(6) as it originally stood; but when judicial decisions rendered the said assumption invalid, it was thought necessary to clarify the intention of the Constitution by making the amendment. It is because

the amendment was thus made for purposes of clarification that it begins with the words "in particular". These words indicate that restrictions imposed on the fundamental rights guaranteed by Article 19(1)(g) which are reasonable and which are in the interests of the general public, are saved by Article 19(6) as it originally stood; the subject-matter covered by the said provision being justiciable, and the amendment adds that the State monopolies or nationalisation, schemes which may be introduced by legislation, are an illustration of reasonable restrictions imposed in the interests of the general public and must be treated as such. That is why the question about the validity of the laws covered by the amendment is no longer left to be tried in Courts. This brings out the doctrinaire approach adopted by the amendment in respect of a State monopoly as such.

16. This conclusion, however, still leaves two somewhat difficult questions; to be decided what does "a law relating to" a monopoly used in the amendment mean? and what is the effect of the amendment on the other provisions of Article 19(1)? The Attorney-General contends that the effect of the amendment is that whenever any law is passed creating a State monopoly, it will not have to stand the test of reasonableness prescribed by the first part of Article 19(6) and its reasonableness or validity cannot be examined under any other provision of Article 19(1). Taking the present Act, he urges that if the State monopoly is

protected by the amendment of Article 19(6), all the relevant provisions made by the Act in giving effect to the said monopoly are also equally protected and the petitioners cannot be heard to challenge their validity on any ground. What is protected by the amendment must be held to be constitutionally valid without being tested by any other provisions of Article 19(1). That, in substance, is the position taken by the learned Attorney-General.

17. In dealing with the question about the precise denotation of the clause "a law relating to", it is necessary to bear in mind that this clause occurs in Article 19(6) which is, in a sense, an exception to the main provision of Article 19(1)(g). Laws protected by Article 19(6) are regarded as valid even though they impinge upon the fundamental right guaranteed under Article 19(1)(g). That is the effect of the scheme contained in Article 19(1) read with Clauses (2) to (6) of the said Article. That being so, it would be unreasonable to place upon the relevant clause an unduly wide and liberal construction. "A law relating to" a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion, the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State

monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the said part and their validity must be judged under the first part of Article 19(6). In other words, the effect of the amendment made in Article 19(6) is to protect the law relating to the creation of monopoly and that means that it is only the provisions of the law which are integrally and essentially connected with the creation of the monopoly that are protected. The rest of the provisions which may be incidental do not fall under the latter part of Article 19(6) and would inevitably have to satisfy the test of the first part of Article 19(6).

18. The next question to consider is what is the effect of the amendment on the other fundamental rights guaranteed by Article 19(1)? It is likely that a law creating a State monopoly may, in some cases; affect a citizen's rights under Article 19(1)(f) because such a law may impinge upon the citizen's right to dispose of property. Is the learned Attorney-General right when he contends that laws protected by the latter part of Article 19(6) cannot be tested in the light of the other fundamental rights guaranteed by Article 19(1)? The answer to this question would depend upon the nature of the law under scrutiny. There is no doubt that the several rights guaranteed by the 7 sub-clauses of Article 19(1) are separate and distinct fundamental rights

and they can be regulated only if the provisions contained in clauses (2) to (6) are respectively satisfied. But in dealing with the question as to the effect of a law which seeks to regulate the fundamental right guaranteed by Article 19(1)(g) on the citizen's right guaranteed by Article 19(1)(f), it will be necessary to distinguish between the direct purpose of the Act and its indirect or incidental effect. If the legislation seeks directly to control the citizen's right under Article 19(1)(g), its validity has to be tested in the light of the provisions contained in Article 19(6); and if such a legislation, as for instance, a law creating a State monopoly, indirectly or incidentally affects a citizen's right under any other clause of Article 19(1) as for instance, Article 19(1)(f), that will not introduce any infirmity in the Act itself. As was observed by Kania, C.J. in A.K. Gopalan v. State of Madras [1950 SCR 88 at p. 101] , if there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance for gunitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of Article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result

of the detention otherwise valid, on the mode of the detenue's life.

19. These observations were subsequently adopted by Patanjali Sastri J. in Ram Singh v. State of Delhi, [1951 SCR 451 at p. 456] who added that in Gopalan's case the majority view was that a law which authorises deprivation of personal liberty did not fall within the purview of Article 19 and its validity was not to be judged by the criteria indicated in that Article but depended on its compliance with the requirements of Articles 21 and 22, and since Section 3 satisfied those requirements, it was constitutional.

20. The same view has been accepted by this Court in Express Newspapers (Private) Ltd. v. Union of India [1959 SCR 12 at pp. 128-130]) as well as in The State of Bombay v. R.M.D. Chamarbaugwala [1957 SCR 874 at p. 927] . Therefore, in dealing with the attack against the validity of a law creating State monopoly on the ground that its provisions impinge upon the other fundamental rights guaranteed by Article 19(1), it would be necessary to decide what is the purpose of the Act and its direct effect. If the direct effect of the Act is to impinge upon any other right guaranteed by Article 19(1), its validity will have to be tested in the light of the corresponding clauses in Article 19 if the effect on the said right is indirect or remote, then its validity cannot be successfully challenged.

21. It will be recalled that clause (6) is co-related to the fundamental right guaranteed under Article 19(1) (g) as other clauses are co-related to the other fundamental rights guaranteed by Article 19(1)(a) to (f), and so, the protection afforded by the said clause would be available to the impugned statute only in resisting the contention that it violates the fundamental right guaranteed under Article 19(1)(g). If the statute, in substance, affects any other right not indirectly, but directly, the protection of clause 19(6) will not avail and it will have to be sustained by reference to the requirements of the corresponding clauses in Article 19. The position, therefore, is that a law creating a State monopoly in the narrow and limited sense to which we have already referred would be valid under the latter part of Article 19(6), and if it indirectly impinges on any other right, its validity cannot be challenged on that ground. If the said law contains other incidental provisions which are not essential and do not constitute an integral part of the monopoly created by it, the validity of those provisions will have to be tested under the first part of Article 19(6), and if they directly impinge on any other fundamental right guaranteed by Article 19(1), the validity of the said clauses will have to be tested by reference to the corresponding clauses of Article 19. It is obvious that if the validity of the said provisions has to be tested under the first part of Article 19(6) as well as Article 19(5), the position would be the same because for all practical purposes, the tests prescribed by the said two clauses are the same. In our

opinion this approach introduces a harmony in respect of the several provisions of Article 19 and avoids a conflict between them.

22. In this connection, it is necessary to add that in a large majority of cases where State monopoly is created by statute, no conflict would really arise e.g., where under State monopoly, the State purchases raw material in the open market and manufactures finished goods, there would hardly be an occasion for the infringement of the citizens' right under Article 19(1)(f). Take, for instance, the State monopoly in respect of road transporter air transport; a law relating to such a monopoly would not normally infringe the citizen's fundamental right under Article 19(1)(f). Similarly, a State monopoly to manufacture steel, armaments, or transport vehicles, or railway engines and coaches may be provided for by law which would normally not impinge on Article 19(1)(f). If the law creating such monopolies however, to make incidental provisions directly impinging on the citizens' rights under Article 19(1)(f), that would be another matter.

23. What provisions of the impugned statute are essential for the creation of the monopoly, would always be a question of fact. The essential attributes of the law creating a monopoly will vary with the nature of the trade or business in which the monopoly is created; they will depend upon the nature of the commodity, the nature of commerce

in which it is involved and several other circumstances. In the present case, the State monopoly has been created in respect of Kendu leaves, and the main point of dispute between the parties is about the fixation of purchase price which has been provided for by Section 4. Mr Pathak contends that the fixation of purchase price is not essential for the creation of monopoly, whereas the learned Attorney-General argues that monopoly could not have functioned without the fixation of such price. We are not prepared to accept the argument that the fixation of purchase price in the context of the present Act was an essential feature of the monopoly. It may be that the fixing of the said price has been provided for by Section 4 in the interests of growers of Kendu leaves themselves, but that is a matter which would be relevant in considering the reasonableness of the restriction imposed by the section. But take a hypothetical case where in creating a State monopoly for purchasing a commodity like Kendu leaves, the law prescribes a purchase price at unreasonably low rate, that cannot be said to be an essential part of the State monopoly as such, and its reasonableness will have to be tested under Article 19(1)(6). On the facts of this case and in the light of the commodity in respect of which monopoly is created, it seems difficult to hold that the State monopoly could not have functioned without fixing the purchase price. We are not suggesting that fixing prices would never be an essential part of the creation of State monopoly though, prima facie, it seems doubtful whether fixing purchase price can properly

form an integral part of State monopoly; what we are holding in the present case is that having regard to the scheme of the State monopoly envisaged by the Act, Section 4 cannot be said to be such an essential part of the said monopoly as to fall within the expression "law relating to" under Article 19(6). Therefore, we are satisfied that the validity of Section 4 must be tested in the light of the first part of Article 19(6) so far as the petitioner's rights under Article 19(1)(g) are concerned, and under Article 19(1)(f) so far as his rights under Article 19(5) are concerned.

24. Thus considered, there can be no difficulty in upholding the validity of Section 4. As we have just indicated, if the legislature had allowed the State monopoly to operate without fixing the prices, it would have meant hardship to the growers and undue advantage to the State. If the ordinary law of demand and supply was allowed to govern the processes in all probability the said prices would have worked adversely to the interests of the growers and to the benefit of the State in the case of perishable commodities like Kendu leaves. That is why the legislature has deliberately provided for the fixation of prices and prescribed the machinery in that behalf. It is true that the prices fixed are not the minimum prices; but the fixing of minimum prices would have served no useful purpose when a State monopoly was being created, and so, prices which can be regarded as fair are intended to be fixed by Section 4. A representative advisory Committee has to be appointed

and it is in consultation with the advice of the said Committee that prices have to be fixed. In fact, the present prices have been fixed according to the recommendations made by the said Committee. Thus, it is clear that the object of fixing the prices was to help the growers to realise a fair price. It is nobody's case that the prices are unduly low or compare unfavourably with prices prevailing in the locality in the previous years. Therefore, we feel no hesitation in holding that restrictions in regard to the fixing of price prescribed by Section 4 are reasonable and in the interests of the general public both under Article 19(5) and Article 19(6). The result is that the challenge to the validity of Section 4 fails.

25. At this stage, we may refer to four decisions of this Court in which the question about the construction of Article 19(6) has been incidentally considered. In *Saghir Ahmed v. State of U.P.* [(1955) 1 SCR 707], this Court was called upon to consider the validity of the relevant provisions of the U.P. Board Transport Act (2 of 1951) and the question had to be decided in the light of Article 19(6) as it stood before the amendment. But at the time when the judgment of this Court was pronounced, the Amendment Act had been passed, and Mukherjea J. who spoke for the Court, referred to this amendment incidentally. "The result of the amendment", observed the learned Judge, "is that the State would not have to justify such action as reasonable at all in a Court of law and no objection could be

taken to it on the ground that it is an infringement of the right guaranteed under Article 19(1) (g) of the Constitution. It is quite true that if the present statute was passed after the coming into force of the new clause in Article 19(6) of the constitution, the question of reasonableness would not have arisen at all and the appellants' case on this point, at any rate, would have been unarguable." (p. 727). While appreciating the effect of these observations, however, we have to bear in mind the fact that the effect of the amendment did not really fall to be considered and the impact of the amendment in Article 19(6) on the right under Article 19(1)(f) has not been noticed.

26. In *Parbhani Transport Cooperative Socety Ltd. v. Regional Transport Authority Aurangahad* [(1960) 3 SCR 177 at p. 187] , this Court has observed that Article 19(6) by providing that nothing in Article 19(1)(g) shall affect the application of any existing law in so far as it relates to, or prevent the State from making any law relating to the carrying on by the State of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise, would seem to indicate that the State may carry on any business either as a monopoly, complete or partial, or in competition with any citizen and that would not have the effect of infringing any fundamental rights of such citizen. It is true that the last part of the statement refers to any fundamental rights of the citizen, but that, in the context, cannot be taken to

mean a decision that a right under Article 19(1)(f) would necessarily fall within the scope of the said observation.

27. In Dosa Satyanarayanamurthy etc. v. Andhra Pradesh State Road Transport Corporation [(1961) 1 SCR 642] , this Court has observed that sub-clause (ii) of Article 19(6) is couched in very wide terms. Under it, the State can make law for carrying on a business or service to the exclusion, complete or partial, of citizens or otherwise There are, therefore, no limitations on the State's power to make laws conferring monopoly on it in respect of an area, and person or persons to be excluded, (p. 649).

28. To the same effect are the relevant observations made by this Court in the case of H.C. Narayannappa v. State of Mysore [(1960) 3 SCR 742 at p. 752]

29. We must now examine the validity of the argument urged by Mr Pathak that the Act is bad because it seeks to create a monopoly in favour of individual citizens described by the Act as 'agents'. For deciding this question, we must revert once again to the amendment made in Article 19(6). The argument is that though the State is empowered to create State monopoly bylaws the trade, in respect of which the monopoly is sought to be created must be carried on by the State or by a corporation owned or controlled by the State. There can be no doubt that though the power to create monopoly is conferred on the legislatures in very

wide terms and it can be created in respect of any trade, business industry or service, there is a limitation imposed at the same time and that limitation is implicit in the concept of State monopoly itself. If a State monopoly is created, the State must carry on the trade, or the State may carry it on by a corporation owned or controlled by it. Thus far, there is no difficulty. Mr Pathak, however, contends that the State cannot appoint any agents in carrying on the State monopoly, whereas the learned Attorney-General urges that the State is entitled not only to carry on the trade by itself or by its officers serving in its departments, but also by agents appointed by it in that behalf; and in support of his argument that agents can be appointed, the learned Attorney-General suggests that persons who can be treated as agents in a commercial sense can be validly appointed by the State in working out its monopoly. We are not inclined to accept either the narrow construction pressed by Mr Pathak, or the broad construction suggested by the learned Attorney-General. It seems to us that when the State carries on any trade, business or industry, it must inevitably carry it on either departmentally or through its officers appointed in that behalf. In the very nature of things, the State as such, cannot function without the help of its servants or employees and that inevitably introduces the concept of agency in a narrow and limited sense. If the State cannot act without the aid and assistance of its employees or servants, it would be difficult to exclude the concept of agency altogether. Just as, the State can appoint

a public officer to carry on the trade on its business, so can it appoint an agent to carry on the trade on its behalf. Normally and ordinarily, the trade should be carried on departmentally or with the assistance of public servants appointed in that behalf. But there may be some trades or businesses in which it would be inexpedient to undertake the work of trade or business departmentally or with the assistance of State servants. In such cases, it would be open to the State to employ the services of agents, provided the agents work on behalf of the State and not for themselves. Take the case of Kendu leaves with which we are concerned in the present proceedings. These leaves' are not cultivated but grow in forests and they are plucked during 3 to 4 months every year, so that the trade of purchasing and selling them if confined generally to the said period. In such a case, it may not be expedient for the State always to appoint Government servants to operate the State monopoly, and agency would be more convenient, appropriate and expedient. Thus considered, it is only persons who can be called agents in the strict and narrow sense to whom the working of the State monopoly can be legitimately left by the State. If the agent acquires a personal interest in the working of the monopoly, ceases to be accountable to the principal at every stage, is not able to bind the principal by his acts, or if there are any other terms of the agency which indicate that the trade or business is not carried on solely on behalf of the State but at least partially on behalf of the individual concerned, that would

fall outside Article 19(6)(ii). Therefore, in our opinion, if a law passed creating a State monopoly and the working of the monopoly is left either to the State or to the officers of the State appointed in that behalf, or to the department of the State, or to persons appointed as agents to carry on the work of the monopoly strictly on behalf of the State, that would satisfy the requirements of Article 19(6)(ii). In other words, the limitations imposed by the requirement that the trade must be carried on by the State or by a corporation owned or controlled by the State cannot be widened and must be strictly construed and agency can be permitted only in respect of trades or businesses where it appears to be inevitable and where it works within the well recognised limits of agency. Whether or not the operation of State monopoly has been entrusted to an agent of this type, will have to be tried as a question of fact in each case. The relationship of agency must be proved in substance, and in deciding the question, the nature of the agreement, the circumstances under which the agreement was made and the terms of the agreement will have to be carefully examined. It is not the form, but the substance that will decide the issue. Thus considered, we do not think that Section 3 is open to any challenge. Section 3 allows either the Government or an officer of the Government authorised in that behalf or an agent in respect of the unit in which the leaves have grown, to purchase or transport Kendu leaves. We are satisfied that the two categories of persons specified in clauses (b) and (c) are intended to work as agents of the

Government and all their actions and their dealings in pursuance of the provisions of the Act would be actions and dealings on behalf of the Government and for the benefit of the Government. Mr Pathak's contention that the persons specified in clauses (b) and (c) are intended by the Act to work on their own account seems to us to be inconsistent with the object of the section and the plain meaning of the words used in the relevant clauses. We wish to make it clear that we uphold the validity of Section 3 because we are satisfied that clauses (b) and (c) of the said section have been added merely for clarification and are not intended to and do not include any forms of agency which would have been outside the provision of Section 3 if the said two clauses had not been enacted. If Section 3 is valid, then Section 8 which authorises the appointment of agents must also be held to be valid."

The said Constitution Bench decision was considering the power of the State to regulate and fix the price of Kendu leaves being collected in the State of Orissa, that was challenged on the ground that it created a monopoly by fixation of the purchase price that too even through agents of the State. This was thoroughly discussed and it was held that if the law directly impinges on the citizens rights that could be examined on the touchstone of Article 19(1) of the Constitution of India and as to what provisions of the impugned

statute are essential for the creation of the monopoly would always be a question of fact on the basis whereof a challenge can be either accepted or rejected. In that case, it was held that the monopoly to operate, while fixing prices, does not impinge on the fundamental rights of the growers and further held that if the legislature had allowed the State monopoly to operate without fixing the prices, it would have meant hardship to the growers and undue advantage to the State. The Court further indicated that there is a limitation imposed, which is implicit in the concept of State monopoly. It was pointed out in paragraph (29) extracted herein above that the State must carry on the trade, or the State may carry it on by a Corporation owned or controlled by it or employ the services of agents, provided the agents work on behalf of the State and not for themselves. It was further held that if the agent acquires a personal interest in the working of the monopoly and ceases to be accountable to the principal and is not able to bind the principal by his acts, reflecting that the trade or business is being carried by himself and not on behalf of the State, then the same would fall outside Article 19(6)(ii) of the Constitution. The Court ultimately

ruled whether or not the State monopoly has been entrusted to an agent of this type, will have to be tried as a question of fact in each case.

46. The said decision, in our opinion, even though protects State monopoly, but clarifies the law, as in the present context, the hoarding has to be established only on the land belonging to the Municipal Corporation. The Corporation does not profess to be entering into any business of setting up hoardings or advertising itself or through its agents. From the pleadings on record, it is evident that it proposes to issue tenders and earn revenue out of it by allowing the setting up of hoardings through service providers on contract basis. Essentially, they are not agents in the true sense of the term, but are business entrepreneurs who may be virtually purchasing the right to set up a hoarding on payment of certain charges. The business of setting up of hoardings or advertisements, therefore, is not being run by the Corporation and, hence, the judgment in the case of *Akadasi Padhan v. State of Orissa and others* (supra), in our opinion, may not be of avail to the

State or Municipal Corporation on the facts of the present case. To that extent, we find that the ratio of the decision in the case of *Rashbihari Panda and others v. State of Orissa* (supra) cited by Mr.A.K.Sriram, learned counsel, comes to the aid of the petitioners.

47. The next decision cited by the learned Advocate General is in the case of *Municipal Committee, Amritsar and others v. State of Punjab and others* (supra), that was dealing with a law promulgated prohibiting the holding of cattle fairs at a particular place. The Supreme Court held that the sale and purchase of cattle would not be effected and in such circumstances, any challenge raised to such a law has to fail, as the State was not attempting to prevent transactions of sale and was regulating it by defining particular areas where fairs can be regularly conducted. This was done in order to regulate the holding of fairs and was not essentially to create a monopoly as is involved in the present case, where the impugned amendment clearly monopolizes the setting up of hoardings only on the Corporation land to the exclusion of all others, whether private or otherwise without any purpose set out

justifying situs of hoardings only on such lands.

48. The decision in the case of *M/s.New Bihar Biri Leaves Company and others v. State of Bihar and others* (supra) follows the judgment in the case of *Akadasi Padhan v. State of Orissa and others* (supra).

49. In the case of *State of Tamil Nadu v. M/s.Hind Stone and others* (supra), the Apex Court held that mines can be conserved for future and to that effect prohibition of fresh minings would be justified. It was further held in paragraph (10) that each case must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. In our opinion, nothing rational has been demonstrated to establish that the only practical way to control hoardings is by locating them exclusively on Corporation land.

50. The question, therefore, in the present case is as to whether by adopting a law for setting up of hoardings only on Corporation land is the only practical and possible manner of regulation to control hoardings. It is here that we may indicate that to arrive at such a conclusion so as to restrict hoarding only on Corporation land in the larger public interest was a practical decision, is not exactly borne out from the material on record. The problem, as expressed by the learned Advocate General, is of the mushrooming of hoardings and the non availability of enough infrastructure in order to control unauthorized setting up of hoardings. We are unable to comprehend this either from the affidavit filed on behalf of the Corporation or from any other material, in as much as the Act and the Rules provide for inspection and for taking action by the Municipal Commissioner either himself or through officers authorized by on that behalf. The paucity of staff or the paucity of infrastructure has not been specifically exhibited. The inaction on the part of the Municipal authorities, which at times may be on account of their connivance, cannot be a ground to create a monopoly of setting up of hoardings only on

Municipal Corporation land. This amounts to banning activity, even otherwise if a licence can be granted at any other place in conformity with the guidelines as prescribed or in terms of the policy dated 5.6.2018 merely because there is a failure of proper administration by the Corporation.

51. The policy dated 5.6.2018 nowhere suggests that hoarding can be set up as a matter of rule only on Corporation land. To the contrary, it suggests that it can be on private, commercial and industrial land. The aforesaid policy can be very well implemented by placing restrictions and classifying of private land as well, but merely because the Municipal Corporation is unable to control its own officials in monitoring and inspecting the setting up of hoardings, cannot be a ground to impose a total ban. There is no rationality in this as well, in as much as there is a possibility of violation of the terms and conditions of licence even by a service provider or an advertiser setting up a hoarding on land belonging to the Municipal Corporation. Thus, by merely reducing the area of setting up of hoardings by creating a classification is not the

practical solution or the object sought to be achieved, and it rather amounts to banning the setting up of hoardings and advertisements for no valid reason. This is not giving of a preference or prioritizing the setting up of hoarding, but is totally denying the participation of private ownership and even land owned by the Government itself from having the privilege of a licence to set up a hoarding.

52. To cut the matter short, the impugned notification dated 31.1.2019, enforcing the same with effect from 1.2.2019, that hoardings will now only be set up on land belonging to the Corporation does not satisfy the test of rationality or practicality.

53. The learned Advocate General is correct in his submission that the regulations already in place have been upheld by this Court in the case of *N.P.Narayana Bhat v. State of Tamil Nadu (supra)* and *Novva ADS v. Secretary, Dept. of Municipal Administration and Water Supply and another (supra)*. He is also correct in his submissions that regulations can be made and restrictions can be imposed, but as indicated above, in the instant case, the regulation

and the restriction of setting up of hoardings only on land belonging to the Corporation, in our opinion, extends to the stage of total prohibition.

54. Apart from this, the argument raised by the learned counsel for the Railways is also worth noting. He has cited the Division Bench judgment of the Bombay High Court in *Union of India v. Municipal Corporation of Greater Mumbai and others*, CDJ 2017 BHC 1831, where the very issue of placing restrictions by the Municipal Corporation was discussed *vis-a-vis* the Railways Act, 1989 and it was held that the Railways Act provided for undivided and exclusive control of Railway administration and it was further held that the provisions of the Mumbai Municipal Corporation Act would not apply compelling the Railways to have a licence from the Municipal Corporation. सत्यमेव जयते

55. It appears that the legislature while introducing the impugned amendment has not taken care of the impact of Central legislations which govern the law and property either belonging to

the Central Government, or even for that matter legislations protecting the rights of the property belonging to the State of Tamil Nadu, the provisions thereof are missing in the impugned legislation.

56. On the other hand, learned counsel for the petitioners while advancing their submissions have relied on decisions that shed further light on the issues involved.

57. The judgment in the case of *Deepak Sibal v. Punjab University and another* (supra) rules on classification, where the rule of admission for providing certain class of wards of employees to be eligible for such admission was held to be violative of Article 14 of the Constitution of India. On the issue of classification, the more exhaustive judgments are in the case of *State of Maharashtra and another v. Indian Hotel and Restaurants Association and others* (bar dancer's case), where the Apex Court analyzed the law and pointed out that there hardly existed any distinction between exempted establishments and prohibited establishments, insofar as

the nature of the activity concerned and its impact had to be looked into. The constitutionality, therefore, had to be judged from that point of view keeping in view the parameters of reasonableness of the restrictions.

58. In another judgment in the case of *U.P. Power Corporation Ltd. v. A.P.Mishra* (supra), the Apex Court stated the constitutionality test for judging a classification. Paragraphs 36 and 37 of the said judgment are extracted hereinunder:-

"36. It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

35. Every classification, to be legal, valid and permissible, must fulfil the twin test, namely,

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(ii) such differentia must have a rational relation to the object sought to be achieved by the statute or legislation in question."

This would however be dependent upon the nature of the activities involved and if it brings about total prohibition.

59. This issue was also dealt with by the High Court in the case of *Advocates Forum for Social Justice vs. State of Tamil Nadu (supra)*, where a ban had been imposed for setting up colleges for legal education. The same was struck down as being *ultra vires* under Article 19 (1) (g) of the Constitution of India. While judging the correctness or otherwise of such a provision, the nature of the activity involved is also to be taken into account and for that, when a challenge was raised by the service providers, namely those who had the licence of hoardings, it came to be held that even though Service Providers do not have the right to challenge the validity of a regulation alleging violation of Article 19(1) (a) of the Constitution of India, it was otherwise held that the right to freedom of speech in relation to newspapers had been upheld by the Supreme Court. On the other hand, the right to freedom of speech and expression in a

matter of advertisement of a medicinal product was pointed out to have not been affected by any violation of fundamental rights, as it was a commercial advertisement as held in the case of *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India*, AIR 1960 SC 554. It was also held, after relying on *Sakal Papers and others v. Union of India*, AIR 1962 SC 305, that it is the selected fact or thing which is an essential and basic attribute of the concept of freedom of speech and the object that it seeks to achieve which is determinative of the factor impinging upon the fundamental rights. The test of reasonableness of a policy decision was also admitted to judicial review in certain matters, as held by a Division Bench of this Court in *State of Tamil Nadu and another v. K.Vinayagamurthy*, 2002 (3) CTC 257 and the judgment in the case of *Secretary to Government, T.N. and another v. K.Vinayagamurthy*, (2002) 7 SCC 104, which upheld the correctness of the judgment of the Division Bench aforesaid.

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60. As to what is reasonable restriction has to be understood from the meaning of the word '*reasonable*' which implies intent,

care and deliberation dictated by reason. A law which arbitrarily or excessively invades the right of a person may not be said to contain the quality of reasonableness. The law must strike a balance between the right guaranteed and the social control which is sought to be introduced in the guise of reasonable restriction. A reasonable restriction under the Constitution connotes the limitation imposed on a citizen in the enjoyment of his right and it must not be excessive and beyond what is actually required in the interest of the public. To calibrate the restriction being reasonable, the Court has to look into the extent and urgency of the evil sought to be remedied, the prevailing condition at the time that deserves to be determined by objective standards and not by mere subjectivity. The restriction in order to be reasonable must have a rational relation with the object which the legislature seeks to achieve and must not be in excess to or beyond the said object. The object in the present case is to regulate the setting up of hoardings and not to eliminate them. To the contrary, the impugned notification amounts to an act of hoarding of advertisements only on the land of the Corporation. This is neither the object which is sought to be

achieved nor does it fulfill the said aim. The restriction imposed has reached a stage of prohibiting the utilization of any other land and in such a situation, special care has to be taken by the Court to see that the test of reasonableness is satisfied. The direct, inevitable and the real impact of the impugned notification is that the fundamental rights of private land owners or even those who are seeking justifiably to put up hoardings on such land are being prohibited from doing so which violates Article 19(1)(g) of the Constitution of India. The legislation being contrary to that extent is also hit by Article 14 of the Constitution of India. There is, therefore, a direct and proximate nexus of the damage that is being caused by the imposition of such legislation and it goes beyond the requirement of placing restriction on hoardings. In effect, the legislation has culminated in placing restrictions not on hoardings, but on the utilization of private land, Government land or otherwise, instead of bringing about any social control. No substantive object can be achieved by placing such a restriction and no material has been placed either before us to establish the same. It may augment the revenue of the Municipal Corporation, but that is also

doubtful inasmuch as the scarcity of the land and its location as owned by the Corporation may itself be a detriment for undertaking a drive for augmenting revenue. By monopolizing the right to erect hoardings only on his own land is by itself contrary, giving the Corporation a free hand for setting up of hoardings at a place to the exclusion of others.

61. Thus, from the conspectus of the judgments and the discussions herein above, what is to be seen is as to the nature of the activities and the stakeholders who have come up before this Court. The first are the Service Providers, namely those who are obtaining licences for setting up of hoardings. They *per se* cannot have a fundamental right to claim as a matter of choice a particular place for setting up of their hoarding. The second set are the advertisers, who also cannot have a right of exclusive choice of advertising at any particular place of their choice, which can be subjected to reasonable restrictions. However, the land owners and the land belonging to the Central or the State Government have to be kept separately *vis-a-vis* their right to let out the land for setting

up of hoardings. The question is can such people be absolutely excluded as a class without a valid reason from offering their land to set up a hoarding.

62. It is here that we may point out that no material has been brought forth so as to determine a distinction between a private land or a land belonging to the State Government or the Central Government as against the land of the Municipal Corporation being *per se* suitable or unsuitable for setting up of hoardings. The situs of the hoarding can be regulated, but the land availability whether it is private or Government or belonging to the Corporation can also be regulated by the same set of laws to the extent it is permissible. It is doubtful as to whether the land of the Railways could also be subjected to such control, keeping in view the ratio of the Division Bench judgment of the Bombay High Court that has been referred to herein above. A violation of terms and conditions can occur with regard to any hoarding for which the licence is granted, whether it is situate over Corporation land or private land or Government land. The regulation and control as per the municipal laws will apply

equally and therefore, the placing of a hoarding at place 'A' or at place 'B' would hardly make a difference. While granting licence, the Corporation has the authority not to grant licence at a particular place keeping in view the necessity or otherwise of placing such a restriction. Thus, there is no rationality in totally excluding private land or State Government land or otherwise, the land belonging to the Central Government like the Railways. The choice to grant licence or otherwise is still there and any violation of the restrictions imposed can still be a matter of application by the Municipal Corporation. Any service provider, advertiser or for that matter, a licence holder cannot afford to violate the terms and conditions of the Act and the Rules framed for regulating the business of setting up of hoardings for advertisements. The hoardings, if they become incapable of further retention by virtue of any harm being caused by them in whatever sphere, then the same can also be removed, as a licence does not create a permanent right or an absolute right for continuing to keep the hoarding if it otherwise is against public interest or is causing public harm.

63. Thus, the place where a hoarding has to be set up has to be regulated and merely because the Municipal Corporation through its employees is unable to cope up with the monitoring process, the same cannot be a ground to exclude and classify private land or Government land as untouchable and unavailable. This clearly amounts to prohibition and such curtailment also hits the fundamental rights of a private land owner to enjoy his property, if otherwise a licence to set up a hoarding can be granted. It is not necessary that every land belonging to the Corporation is suitable for setting up of a hoarding, but, then, creating a monopoly in its favour clearly amounts to allowing a Municipal Corporation to raise hoardings only on its lands wherever it chooses. The Municipal Corporation also cannot be permitted to raise the hoardings on land belonging to it, if it is otherwise not desirable or permissible to set up a hoarding on such land.

64. The parameters therefore should be of a similar standard and there cannot be a question of more or a less violation by a licence holder, whether he is on Corporation land or a private land

or State land. There cannot be a logical presumption that there will be no violations if hoardings are set up on Corporation land exclusively. As already observed above, merely because the Corporation is not able to organize its functioning by carrying out inspection and plugging the mushrooming of hoardings, the same cannot be a ground to bring about a law to put a ban on setting up of hoardings on land other than belonging to the Corporation. There appears to be no rationality and the learned counsel for the petitioners are right in their submission that there is no rational nexus with the object sought to be achieved by placing such a ban on utilization of land other than Corporation land. To our mind, this will generate a cartel and concentrate the business in the hands of a few who would be getting contracts from the Municipal Department to exclusively monopolize in this business at the cost of an unconstitutional provision, as rightly submitted by the learned counsel for the petitioners. This is, therefore, clearly a case where the impugned phrase "*belonging to the Corporation*" is manifestly arbitrary and violative of Article 14 of the Constitution of India and also impinges upon the fundamental rights guaranteed under Article

19(1)(g) of the Constitution of India. We, however, do not agree with the argument of the learned counsel for the petitioners that there is a violation of Article 19(1)(a) of the Constitution, in as much as the law which has been brought out and which is under challenge is on setting up of hoardings and not in relation to banning of advertisements.

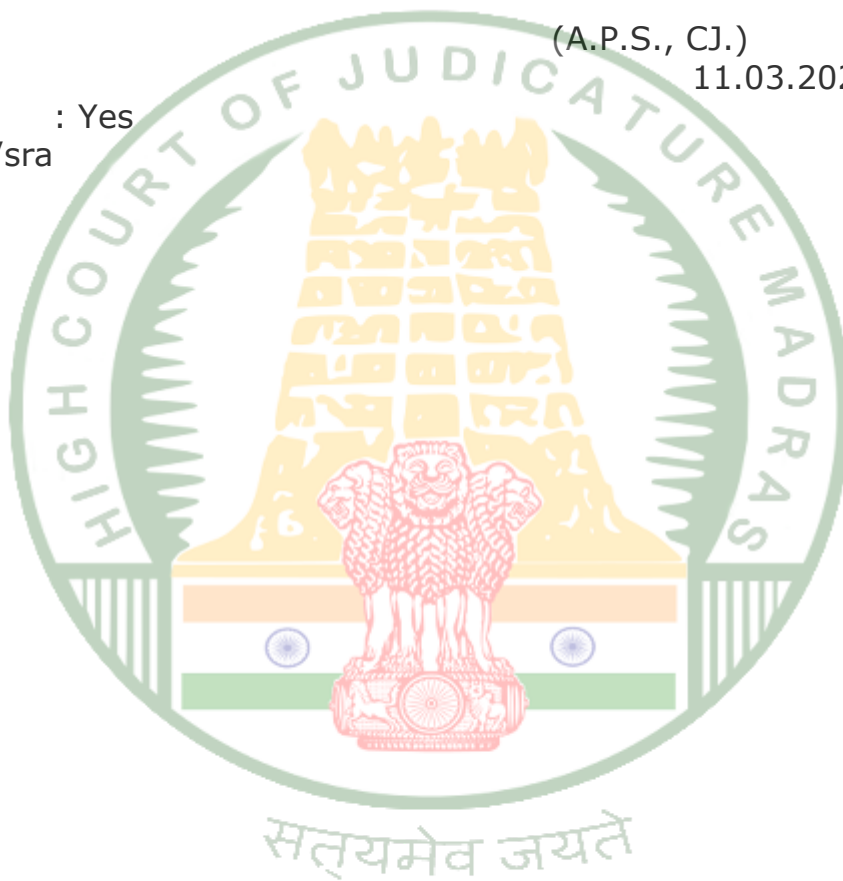
65. For all the reasons aforesaid, the writ petitions are allowed, subject to the observations made herein above and the words "*belonging to the Corporation*" occurring in the impugned provisions as notified on 31.1.2019, with effect from 1.2.2019, are struck down. We clarify that the striking down of the said provision will not automatically entitle any private land owner or otherwise to claim a revival of his application for grant of licence, until either the Corporation frames appropriate Bye-laws or the substantive provisions in question or the Rules framed thereunder are suitably modified in tune with the guidelines that have already been formulated through the Government Order dated 5.6.2018. This exercise may be concluded by the respondents preferably within

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one month from today so that the process of licensing or otherwise may not be delayed any further. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes
bbr/sasi/sra

(A.P.S., C.J.) (S.P., J.)
11.03.2020



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W.P.No.6913 of 2019 etc. batch

THE HON'BLE CHIEF JUSTICE
AND
SUBRAMONIUM PRASAD,J.

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Pre-delivery common order in
W.P.Nos.6913, 6918, 9537, 9544, 10064, 10066, 22026, 23580,
24692, 24694, 26311, 26364, 27767, 27772, 27879, 27882, 33001,
34718, 34725, 34757, 34845, 34861, 34863, 35179, 35181, 35182,
35248, 35333, 35335, 35408, 35682 of 2019
and
W.M.P.Nos.10159, 10166, 21280, 23399, 23402, 24355, 24360,
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