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Regulatory Fee or Disguised Tax? Bombay High Court Upholds Municipal Hoarding Licence Fee in The Post GST Era



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1. Introduction

The decision of the Hon'ble Bombay High Court in *Manoj Madhav Limaye and Others v. State of Maharashtra & Ors.* (2025 SCC OnLine Bom 5058) is an important and far-reaching pronouncement on the distinction between a "tax" and a "regulatory fee", particularly in the post-GST constitutional framework. The judgment assumes significance not only for municipal governance and advertisement regulation, but also for the broader constitutional debate surrounding legislative competence after the Constitution (101st Amendment) Act, 2016.

The ruling addresses a complex intersection of constitutional law, municipal law, delegated legislation, and fiscal jurisprudence. It revisits settled principles relating to regulatory fees, quid pro quo, legislative entries under the Seventh Schedule, and the impact of GST on pre-existing municipal levies. The controversy also raises an important question frequently arising after the introduction of GST — namely, whether every levy connected with a taxable activity automatically stands subsumed within GST.

The judgment, running into more than 150 pages, is extremely exhaustive and deals with several constitutional and statutory issues in substantial detail. Given the sheer breadth of the ruling, extracting a concise yet meaningful analysis becomes a challenging exercise. Nevertheless, for the benefit of readers and tax practitioners, an attempt is made herein to distill the core principles, reasoning, and implications emerging from the decision.

2. Factual Background

The petitioners, along with their association, challenged the levy of licence fees imposed by various municipal corporations in Maharashtra for grant and renewal of permissions relating to sky-signs and hoardings.

The challenge centered around Sections 244 and 386(2) of the Maharashtra Municipal Corporation Act, 1949 ("MMC Act"), under which municipal corporations demanded licence fees for erection and continuation of advertisements, hoardings, kiosks, billboards, name boards and allied outdoor advertising structures.

The petitioners were engaged in the business of outdoor advertising and contended that the impugned levy was, in substance, an "advertisement tax" masquerading as a licence fee. According to them, after the introduction of GST and deletion of Entry 55 from List II of the Seventh Schedule, the State Legislature and municipalities lost the legislative competence to continue such levy.

The challenge also questioned the excessive and allegedly arbitrary rates fixed by municipal corporations, contending that the fees bore no reasonable nexus with the regulatory services rendered.

3. Submissions on Behalf of the Petitioners

The petitioners argued that the levy lacked proper statutory guidance and effectively operated as a revenue-generating measure rather than a regulatory mechanism.

Heavy reliance was placed upon the Bombay Provincial Municipal Corporation (Control of Advertisement and Hoarding) Rules, 2003, which regulated structural specifications, environmental norms, licensing procedure and safety requirements. According to the petitioners, these provisions demonstrated that the object of the legislation was merely regulatory and not fiscal.

The petitioners further argued that Sections 244 and 245 of the MMC Act were enacted only to regulate the skyline and public safety. Hence, under Section 386(2), only administrative or regulatory charges could be recovered and not revenue-oriented imposts.

A major plank of challenge was founded upon the Constitution (101st Amendment) Act, 2016. It was submitted that deletion of Entry 55 of List II — relating to taxes on advertisements — extinguished the State's legislative competence in respect of advertisement-related levies.

The petitioners also argued that Article 243X of the Constitution merely enabled municipalities to levy taxes and fees subject to legislative competence otherwise traceable to the Seventh Schedule. According to them, Article 243X did not independently enlarge legislative powers.

It was emphasized that wherever the Legislature intended to confer taxation powers, the statute expressly prescribed charging provisions, valuation mechanisms and assessment parameters, as seen in Section [127](#) relating to property tax. The conspicuous absence of such machinery provisions in Section 386(2), according to the petitioners, clearly indicated that only a nominal regulatory fee was contemplated.

The petitioners also invoked the doctrine of quid pro quo and argued that the impugned levy lacked any reasonable correlation with services rendered.

Another significant submission was that under the Maharashtra GST (Compensation to Local Authorities) Act, 2017, local authorities were already compensated for revenue losses caused by subsuming local taxes into GST. Therefore, continuation of advertisement-related licence fees amounted to double recovery.

4. Submissions on Behalf of the Municipal Corporations and State

The municipal corporations defended the levy by contending that the impugned amounts were purely regulatory fees and not taxes.

It was argued that deletion of a taxing entry from the Seventh Schedule does not automatically repeal or invalidate pre-existing statutory provisions unless the legislature expressly provides so.

The corporations emphasized that Article 243X of the Constitution independently empowered State Legislatures to authorize municipalities to levy taxes, duties, tolls and fees.

The respondents further submitted that modern jurisprudence has diluted the strict requirement of quid pro quo in cases involving regulatory fees. It was argued that exact mathematical correlation between fees collected and services rendered is no longer a constitutional necessity.

According to the municipal corporations, the licensing regime involved continuous monitoring, structural inspections, safety assessments, environmental regulation and urban planning oversight. The fees collected were therefore connected with an elaborate regulatory mechanism.

The respondents also distinguished between "advertisement tax" and "regulatory licence fee". It was contended that what stood subsumed into GST was only advertisement tax falling under the erstwhile Entry 55 of List II, and not regulatory charges imposed for municipal supervision and control.

The municipal corporations additionally relied upon Entry 5 and Entry 66 of List II, which relate respectively to local government and fees in respect of matters within the State List.

The State also emphasized that the Maharashtra GST legislation repealed only the Maharashtra Advertisement Tax Act, 1967, which pertained to taxes on advertisements exhibited through cinematographs and entertainment venues. Sections 244, 245 and 386(2) of the MMC Act were never repealed.

5. Discussion and Findings of the High Court

5.1 Legislative Scheme under the MMC Act

The Court observed that Section 244 expressly prohibited erection or retention of sky-signs without written permission of the Municipal Commissioner. Such requirement automatically attracted Section 386(2), which authorized levy of fees for grant or renewal of licences and permissions.

The Court held that the statutory framework clearly contemplated a licensing regime involving regulatory supervision. Consequently, municipal corporations possessed lawful authority to levy licence fees.

The Court rejected the argument that there existed any meaningful distinction between "sky-signs" and "advertisements" for purposes of licence fee.

5.2 Distinction Between Tax and Regulatory Fee

One of the most significant portions of the judgment concerns the jurisprudential distinction between "tax" and "fee".

The High Court reiterated that the MMC Act itself maintained a clear distinction between taxation provisions and provisions relating to regulatory fees. Whereas taxation powers were separately enumerated, Sections 244 and 386(2) specifically characterized the impost as a "fee".

The Court relied upon settled constitutional principles to hold that a regulatory fee does not cease to remain a fee merely because it generates revenue incidentally. Importantly, the Court recognized the evolution of law relating to quid pro quo and observed that the traditional doctrine requiring strict mathematical correlation had undergone a substantial transformation.

The Court observed that where the primary object of the levy is regulation in public interest, the levy would retain the character of a fee even if exact equivalence between collection and expenditure is absent.

5.3 Scope of Regulatory Powers

The High Court accepted the municipal corporations' contention that regulation of hoardings and sky-signs involves continuing obligations relating to safety, inspections, public convenience, structural stability, environmental concerns and urban planning.

The Court observed that unrestricted installation of hoardings could create a chaotic urban environment affecting safety and civic administration. Thus, the Court held that the regulatory mechanism extended far beyond mere issuance of a licence and justified the levy of regulatory fees.

5.4 Impact of GST and Deletion of Entry 55 from State List

On the constitutional challenge arising from GST, the Court rejected the petitioners' contention that deletion of Entry 55 extinguished the municipal power to levy licence fees.

The Court held that the impugned levy was not an "advertisement tax" but a regulatory fee. Consequently, it did not derive legislative competence from Entry 55 at all. The Court instead traced legislative competence to Entry 5 and Entry 66 of List II relating to local government and fees.

A particularly important observation of the Court was that entries in the Seventh Schedule are merely "fields of legislation" and not independent sources of legislative power. The Court reiterated the settled principle that legislative entries must receive broad and liberal interpretation.

5.5 Interpretation of Article 243X

The Court also examined Article 243X and accepted the broader proposition that municipalities may be authorized to levy taxes and fees through State legislation. Although the Court did not treat Article 243X as an unrestricted source of taxation power, it recognized its significance in sustaining municipal fiscal autonomy within constitutional parameters.

6. Final Findings of the Court

The High Court ultimately upheld the validity of the impugned licence fees and answered all substantial questions against the petitioners. The Court held that:

- Municipal corporations possess statutory authority to levy licence fees for grant and renewal of permissions relating to sky-signs and hoardings;
- The impugned levy is a **regulatory fee** and not a tax;
- The levy was **not subsumed** into GST;
- Deletion of Entry 55 from List II does not invalidate the levy;
- The doctrine of strict quid pro quo is inapplicable to modern regulatory fee jurisprudence.

7. Conclusion

The judgment in *Manoj Madhav Limaye* is a significant reaffirmation of settled constitutional principles governing the distinction between taxation and regulation. At a time when GST-related constitutional challenges continue to reshape Indian fiscal jurisprudence, the Bombay High Court has drawn an important line between a sovereign taxing power and a regulatory mechanism intended to preserve public order, safety and municipal administration.

The decision also demonstrates the judiciary's consistent reluctance to invalidate regulatory levies merely because they incidentally augment municipal revenues. The Court has rightly emphasized that modern governance necessarily requires robust regulatory frameworks and that municipalities cannot be rendered financially or administratively powerless in discharging civic obligations.

Perhaps the most enduring contribution of the judgment lies in its constitutional analysis of legislative competence after the 101st Constitutional Amendment. The Court's observations that legislative entries are merely fields of legislation, and that regulatory fees stand on a footing distinct from taxes, will likely influence future litigation far beyond municipal advertisement disputes.

Given the complexity and constitutional depth of the ruling, the judgment will undoubtedly remain an important precedent in both municipal law and GST jurisprudence for years to come.