

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.155 OF 2008****IN****WRIT PETITION NO.1132 OF 2002****Dr. Anahita Pandole**

Indian Inhabitant, residing at

5B Sunshine, 156, Maharahi Karve Road,

Mumbai – 400 020.

.. Petitioner

v/s.

1. State of Maharashtra
Urban Development Department
Municipal Corporation of Brihan Mumbai
Mhapalika Marg, Mumbai- 400020.
2. Municipal Corporation of Brihan Mumbai
Mahapalika Marg,
Mumbai- 400 001.
3. Municipal Commissioner,
Municipal Corporation of Brihan Mumbai,
Mahapalika Marg, Mumbai- 400 001.
4. Tree Authority, Gr. Mumbai
Mun.Corp. of Brihan Mumbai,
Mahapalika Marg, Mumbai- 400 001.

And

M/s. Supri Advertising & Entertainment

.. Applicants/

Pvt.Ltd., 506, A-Wing, Vaishali Nagar,
Sat Rasta, Mahalaxmi, Mumbai-400 011.

Intervenors

**ALONGWITH
NOTICE OF MOTION NO.156 OF 2008
IN
WRIT PETITION NO.1132 OF 2002**

Dr. Anahita Pandole
Indian Inhabitant, residing at
5B Sunshine, 156, Maharahi Karve Road,
Mumbai – 400 020.

Petitioner

v/s.

1. State of Maharashtra
Urban Development Department
Municipal Corporation of Brihan Mumbai
Mahapalika Marg, Mumbai- 400020.
2. Municipal Corporation of Brihan Mumbai
Mahapalika Marg,
Mumbai- 400 001.
3. Municipal Commissioner,
Municipal Corporation of Brihan Mumbai,
Mahapalika Marg, Mumbai- 400 001.
4. Tree Authority, Gr. Mumbai
Mun.Corp. of Brihan Mumbai,
Mahapalika Marg, Mumbai- 400 001.
5. B.E.S.T. Brihan-Mumbai Electric
Supply and Transport Undertaking,
BEST Bhavan, BEST Marg,

Mumbai- 400 001.

6. Reliance Energy Ltd.,
Reliance Energy Ltd.,
Reliance Energy Centre,
Santa Cruz (E),
Mumbai- 400 055.

7. Mr. Vijay Kamble,
Joint Commissioner of Police (Traffic)
Traffic Police Control Branch,
87, Sir Pochkhanwala Road,
Traffic Police Head Quarter,
Worli, Mumbai – 400 030.

And

Sayed Tanveer Shah,
Proprietor of M/s. Emaan Publicity,
having his address at 9/65, Anand
Nagar Sahyog Co-operative Housing
Society Limited, Santacruz (East),
Mumbai- 400 055.

.. Respondents

.. Applicants/
Intervenors

AND
NOTICE OF MOTION NO.171 OF 2008
IN
WRIT PETITION NO.1132 OF 2002

Dr. Anahita Pandole
Indian Inhabitant, residing at
5B Sunshine, 156, Maharahi Karve Road,
Mumbai – 400 020.

.. Petitioner

v/s.

1. State of Maharashtra
Urban Development Department
Municipal Corporation of Brihan Mumbai
Mhapalika Marg, Mumbai- 400020.
2. Municipal Corporation of Brihan Mumbai
Mahapalika Marg,
Mumbai- 400 001.
3. Municipal Commissioner,
Municipal Corporation of Brihan Mumbai,
Mahapalika Marg, Mumbai- 400 001.
4. Tree Authority, Gr. Mumbai
Mun.Corpn. of Brihan Mumbai,
Mahapalika Marg, Mumbai- 400 001.

And

Laqshya Media Private Limited,
A private limited company, registered
under the provisions of Companies Act, 1956
and having its registered office at Unit No.17,
Andheri Industrial Estate, Off Veera Desai Road,
Andheri (West), Mumbai-400 053.

.. Applicants/
Intervenors

Mr.Iqbal Chagla, Sr. Advocate, with Mr. Lynn Pereira i/b. M/s.
Federal Rashmikant for the Petitioners

Mr. Aspi Chinoy, Sr. Advocate, with Mr. D.G. Dhanure i/b. M.V.
Kini & Co. for the Applicants in N/M. No.155 of 2008.

Mr. S.I. Menon for the Applicants in N/M. Nos.156 of 2008 and 171 of 2008.

Mr. K.K. Singhvi, Sr. Advocate, with Mrs. P.A. Purandare for Respondent Corporation.

Mr. S.C. Naidu with Mr. S.I. Menon for the Plaintiff in BCC Suit No.461 of 2008.

Mr. Milind More, AGP, for the State.

CORAM : SWATANTER KUMAR, C.J. & V.M. KANADE, J.

2008 Date of Reserving the Judgment : 11th April,

Date of Pronouncing the Judgment: 5th May, 2008

JUDGMENT (Per Swatanter Kumar, C.J.)

Industrial growth and economic prosperity leads to development in various fields. Increase in influx of vehicular traffic is one of the essential consequences of such development. Easy communication and transport facility is essential ingredient for a developing city. The State and other development authorities utilise huge public funds for planned development including laying of roads

to ensure more convenient accessibility to various parts of the city or town and to ensure free flow of traffic. Despite concerted efforts in this direction, it is a matter of public knowledge that traffic congestion has become a serious problem for Municipal administration. Generation of revenue by State/public authorities is again an essential feature of economic progress but such revenue generation normally should not be at the cost of environmental, social and human rights. Rudiments of socio-economic development require that development should be in consonance with the existing laws and must save the interest of basic features of human rights. Development should neither become hazardous much less dangerous to the public and should not be disadvantageous to the public health. Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "Act") had been subjected to innumerable amendments over a period of time primarily with the object to consolidate existing Municipal laws and to recast and explain its provisions in harmony with the requirements of so large and an important city of Mumbai. While declaring the initiation of responsibility for all executive actions resting with the

Commissioner who is required to carry out general provisions of the Act, it is unambiguously indicated that such implementation and enforcement shall be in accordance with the provisions of the Act and other relevant Laws in force. Emphasizing proper and fair exercise of power by the Corporation and its executive is not a new concept. The Supreme Court has emphatically stated in the case of *Gulabchand Bapalal Modi v. Municipal Corporation of Ahmedabad City*, 1971(1) SCC 823 that even in relation to imposition of tax, the court while checking the action on the principle of excessive delegation requires that the action of the Corporation cannot be founded on arbitrary or unconstitutional exercise of power. It was held as under:-

“If the Corporation were to misuse the flexibility of the power given to it in fixing the rates, the State Legislature can at any moment withdraw that flexibility by fixing the maximum limit up to which the Corporation can tax. Indeed, the State Legislature has now done so by Section 4 of Gujarat Act 8 of 1966. The Act does not confer on the Corporation such arbitrary and uncontrolled power as to render such conferment an excessive delegation.

2. In the case of The Municipal Corporation of Greater Bombay and another v. The Advance Builders (India) Private Ltd. and others, 1971(3) SCC 381, the Supreme Court observed that since development and planning is primarily for the benefit of the public, the Corporation is under a statutory obligation to perform its duty in accordance with the provisions of the Act. It has been long held that where a statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the statute required to be done.

3. The discretion to be exercised by certain authorities which is in exercise of statutory powers may not be an exclusive jurisdiction in application and particularly, keeping its impact on society in mind. Such discretion has to be exercised with greater care and in conformity with laws in existence. Legislatively vested power may work as an exclusive jurisdiction, thus, giving it complete precedence over other laws. It may be desirable for the authorities to exercise such discretion or power appropriately. Wherever there is no

exclusive jurisdiction and it can affect enforcement of laws then such authority, power or jurisdiction would have to be exercised in conformity with other laws and it must ensure that the permission or licence granted in furtherance of such power do not offend other specific laws and even for that matter, public policy, public interest and environment. Powers, if any, vested in the Municipal Corporation in relation to grant of permits or licences for mobile advertising vehicles parked in such areas where the Corporation does not enjoy strict exclusive jurisdiction has impact on and is bound to affect traffic laws, public interest and environment. For each of such fields, there are specific laws in terms of Motor Vehicles Act, 1988, Environment Protection Act, 1986 and constitutional protection available to the citizens of India under Article 21 of the Constitution of India having a claim to public interest and in any case, better environment. As back as in the year 1987, the Supreme Court expressed the need for evolving legal jurisprudence to keep pace with the changing socio-economic norms and created an innovative interpretation so as to meet the object of human rights jurisprudence. In the case of *M.C.*

Mehta and another v. Union of India and others, (1987) 1 SCC 395, the Supreme Court has clearly stated the principle that in exercise of its constitutional powers and within the limitations of judicial activism, the court, if necessary, should interpret and evolve new laws so as to protect the basic rule of law and truly apply the spirit of Article 21 with the aid of Article 12 and the court held as under:

“30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the *raison d'ete* of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have to potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoits that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in

R.D. Shetty case brought public sector corporations within the scope and ambit of Article 12 and subjected them to the discipline of fundamental rights. Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists.”

4. However, the courts have to strike a proper harmony between the public interest relating to any laws including environment protection on the one hand and the other public interest which may be relatable to industrial and commercial development. These wider percepts were stated by the Supreme Court in *Bombay Dyeing & Mfg. Co.Ltd.(3) v. Bombay Environmental Action Group and others, (2006)3 SCC 434* observing as under:

“251. It is often felt that in the process of encouraging development the environment gets

sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines "sustainable development" as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

"252. The Indian judiciary has time and again recognised this principle as being a fundamental concept of Indian law.

253. In *Vellore Citizens' Welfare Forum v. Union of India* this Court laid down the salient principles of sustainable development consisting of the precautionary principle and the polluter pays principle being its essential features, stating: (SCC pp. 58-59, paras 11-12)

"11. ... The 'Precautionary Principle'- in the context of the municipal law- means:

(i) Environmental measures- by the State Government and the statutory authorities- must anticipate, prevent and attack the causes of environmental degradation.

(ii) Whether there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

12. 'The polluter pays principle' has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*. The Court observed: (SCC p. 246, para 65)

'... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.'

The Court ruled that: (SCC p. 246, para 65)

'... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.'

5. Advertisement has various modes. Whatever be its dimensions, it has the effect of earning revenue for the State. Fairness and adherence to law is even necessary for the field of advertisement. Advertising has been accepted as corner stone of economic system but all limitations of law and fairness are applicable even in such field. In the case of *Tata Press Limited vs. Mahanagar Telephone Nigam Limited*, 1985 (5) SC 139, the Supreme Court clearly said that Government cannot create a monopoly and it is expected to act fairly even in relation to publication of advertisement. Not only that, principle of fairness is attracted in such cases but equally correct legal approach is that this is subject to restrictions of law of the land is not a freedom unchecked and uncontrolled from any point of view.

6. The Petitioner, a public spirited person, had filed a Public Interest Litigation questioning the construction and display of hoardings particularly from the angle that they were violative of law of the land, were disturbing the heritage and environment of Mumbai. Various prayers had been made in the Petition in relation to removal

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of hoardings, they being violative of provisions of the Motor Vehicle
Act, 1988, the guidelines being violative of the provisions of the
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Mumbai Municipal Corporation Act, 1888 and for a direction that all
hoardings be removed. Even validity of Section 8(4) of the
Maharashtra Urban Areas Tree Preservation Act, 1975 was
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challenged and further had prayed for an order and direction of the
Court for removal of the hoardings, etc. The Petition has been
pending for quite some time. Various orders have been passed by
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the Court from time to time and even a Committee was appointed by
the Court. The Corporation also framed subsequent guidelines. Even
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these matters were questioned. Various Notices of Motion were
taken out in the Writ Petition and question was also raised with regard
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to the mobile hoarding vehicles which, as is apparent from the above
orders, was taken note of by the Court and parties were heard. The
Association of Hoardings Advertisers was present, but thereafter two
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Notices of Motion being Notice of Motion Nos.155 of 2008 and 156 of
2008 were taken out by the Applicants who prayed for vacation and/or
modification of the Orders dated 13th March 2008 and 3rd April 2008.
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Notice was given to the Corporation and all other non-Applicants, some of whom filed replies to these Notices of Motion. Both the Motions were heard at great length and the orders were reserved.

7. According to the Applicant, there is a concluded contract between them and the Corporation and the Corporation had not only issued permission but had entered into a definite contract providing for sites for mobile hoarding vehicles. Thus, these hoardings which are on the trucks do not offend any law, are not violative of any provisions of the Motor Vehicles Act, 1988, traffic rules and for that matter any other law. On the basis of this contract, the Applicants have spent huge amounts running into crores and have also entered into contract with other parties corresponding to the period for which the Corporation has given them rights. According to the Applicants, they have also received no objection certificate from different authorities and guidelines/policy framed by the Corporation in the year 2000 is applicable to them and places no restrictions on them. The

guidelines which have been framed in 2008, effective from 1st April 2008, have no application and are not enforceable retrospectively and they are not capable of superseding all the guidelines of 2000. On the basis of the admitted position, it can safely be concluded that the guidelines of 2000 or 2008 have not been framed by the Corporation but they have been framed by the Commissioner for his own convenience alone without approval of the Corporation. Thus, they would hardly have any legal force. The Commissioner was expected to acquaint himself of various laws in force and should have sought opinion of other concerned authorities of the Government before formulating the guidelines having such far-reaching consequences. On the facts of the case in hand, in any case, they have a very limited relevancy but even under both such guidelines, infringement of law is impermissible, they are not expected to block the traffic on roads and cannot interfere with the aesthetic and heritage value of the city.

8. Their vehicles are registered and their areas of operations

are earmarked and none has complained against them. As such there is no reason even to carry any further the direction that they should not obstruct the flow of the traffic on the main roads or even on the side carriage roads. It is their specific contention that it will be inequitable to pass any injunctive order against them.

9. The Corporation has directly supported the case of these Applicants and has stated that after inviting public tenders the contracts were entered into and the guidelines framed in the year 2000 are applicable. Their entire reliance is on the provisions of Sections 328 and 328-A of the Mumbai Municipal Corporation Act, 1888. The Corporation had the power to issue licences or permissions for display of hoarding which is equally applicable even to mobile hoarding vehicles. The Corporation claims that it has power under Sections 313 and 314 of the Act to remove vehicles if they are causing public inconvenience and the police has to only exercise regulatory powers in terms of Section 33 of the Bombay Police Act and they cannot otherwise interfere with the contract.

10. According to the State Government, the permits for van have been issued. The vehicles were found road worthy and they have no serious objection to the continuation of these vehicles on the road. However, it was stated by the learned Counsel appearing for the State that he has no specific instructions whether they are causing obstruction to the traffic. However, in terms of the permissions granted, these vehicles are not to obstruct traffic and are not violating traffic rules and they should be parked at a given place only for two hours. Of course, the State has not been able to come out with clear and definite stand on the matters in issue.

11. According to the non-Applicants, these vehicles are traffic hazard. Even paper cuttings have been placed on record to show that they are obstructing the flow of traffic and cause traffic congestion. Photographs have been filed on record to show the nature and design of these vehicles which is stated to be in violation of the provisions of the Motor Vehicles Act, 1988 and other statutory

provisions. It is specifically averred that at a number of other places and Marine Drive, in particular, which is not disputed at the bar to be a proposed heritage precinct, these hoarding vehicles cannot be permitted even to be parked in that area and permissions, if any, granted by the State or the Corporation are directly in violation of the law. The copy of the relevant rules and guidelines have been placed on record to show that these vehicles in fact could not even be registered in Bombay and their entire activity is violative of law, against public policy, as it pollutes environment, cause inconvenience and hindrance to the traffic and as they have number of lights, which clearly reflect in the eyes of others, being at a height not permissible. Reliance is strongly placed upon paragraph 8 in the case of *Municipal Corporation of Greater Bombay vs. Bharat Petroleum Corporation Ltd.*, 2002 (4) SCC 219, which reads thus:

“8. On a careful consideration of the approach and methodology of the construction adopted by the High Court, we are of the view that serious infirmity was allowed to be crept into the process due to unwarranted and unjust dissection of Section 328(3)

of the Act and import into the words meanings totally uncalled for and beyond their context, defeating to a great extent the very purpose and aim of enactment of the provision by the legislature. The statutory definition of the expression "sky-sign" ordains it to mean, any word, letter, model, sign, device or representation in the nature of an "advertisement", "announcement" or "direction", supported on or attached to any of the things specified upon or over any land or building or structure in a manner visible against the sky from some point in any street and to be also inclusive of all and every part of such pole, post, standard framework or other support. It is also stipulated therein to include any balloon, parachute or other similar device employed wholly or in part for the purpose of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street. The main and salutary purpose of Section 328/328-A is to regulate the installation/construction of signboards of the nature defined and envisaged therein to keep road margins and space above such margins not indiscriminately meddled with so as to affect the free movement and free flow of traffic, preserve the ecology and environment by averting and regulation to the extent required, ensuring, in public interest, adverse physiological and psychological impacts either directly or indirectly due to the use of neon lights/illuminations used for the installations. The provision for licensing is incidental and necessarily required to properly and effectively enforce the regulations and the levy and collection of fee also ultimately seem to achieve the same purpose. The statutory provisions seem to have been thus enacted with a laudable public purpose and the definition is

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also not only inclusive in nature but the enumeration of the various nature of fixtures, the manner and methods adopted therefor, as also the obvious and ostensible object of such fixtures/ installations found specified therein, under the scheme of things, are found to be with the intention of making the provision an all-inclusive one to cover or rope in all possible things and not to operate in a manner to bring about any limitation on their scope, and that too to render the very provision otiose, redundant and meaningless.”

12. In light of the above, it is argued that the mobile hoarding vehicles should be taken off the road and cannot be permitted to hinder the traffic.

13. Of course, according to the Applicants, these vehicles have been registered in accordance with the law and they cannot be stopped for the contractual period of two years as it will cause them undue hardship.

14. In the present Public Interest Litigation vide our orders dated 13th March, 2008, 3rd April, 2008 and 11th April, 2008, the court

after hearing the counsel appearing for the parties had placed the restrictions for mobile vehicular hoardings not to obstruct the free flow of the traffic on the main road as well as carriage in the city of Mumbai. The order dated 13th March, 2008 reads as under:-

“1. “We have heard learned counsel appearing for different parties. Learned counsel appearing for respondent No.14- Plaintiff in the suit before the learned Judge, City Civil Court, Mumbai has brought to our notice the order of the Hon'ble Supreme Court of India dated 11.3.2008. In view of the order passed by the Hon'ble Supreme Court of India, hearing of this matter is deferred till 28.4.2008.

2. During the course of hearing, Policy Guide Lines framed by the Corporation has been brought to our notice. According to Clause 16(b), no hoarding shall be permitted at intersection within a distance of 25 meters from the stop-line of each approach road and no mobile hoardings will be permitted in carriageways of any road. Further prohibition is placed on display of hoardings around Traffic Islands and signal junctions within 25 meters distance from the road line. We may also notice the prohibition provided under the guide lines, where no hoarding shall be permitted which will cover vision of the sea, greenery, landscaping or large size trees in the adjoining areas. It shall also not be permitted near beaches, parking lots or on any land adjacent to seacoast on seaward side of the road. Besides

this, there are other restrictions stated in these Guide Lines. Even under the guide Lines earlier in force, similar restrictions were placed upon the licensee for permitting to display the hoardings.

Another aspect which requires consideration and addressed at Bar is that mobile advertisements are installed on vehicles which are not in conformity with the provisions of the Motor Vehicles Act and (i) Chapter V Rule 92 read with Rule 126 of the Central Motor Vehicle Rules, 1989 (ii) Chapter VII Rule 160 read with Rule 206, 207 and 208 of the Maharashtra Motor Vehicle Rules, (iii) Overall dimensions of Motor Vehicles (Prescription of Conditions for Exemption) Rules, 1991 and (iv) Notifications issued under Rule 12(1) of Central Motor Vehicle Rules, 1989 and Section 109(3), 110(1)(k) of the Motor Vehicles Act as also appropriate instructions issued by the Central Government. Learned Counsel for the State Government fairly states that he would like to look into the matter, but as of date there is nothing on record to show that manufacture of such vehicles is authorized by any Competent Authority under the statutory provisions who control manufacturing of vehicles, grant of permission for such vehicles to be roadworthy and registration of such vehicles in accordance with law. It is not disputed on behalf of the State that these mobile advertising trucks are parked on the main roads, carriageways, pavements and even in parking areas. It is a matter of common knowledge that there are traffic congestion on the roads of Mumbai and continuous obstruction by parking of these vehicles at above place, adversely affect the flow of traffic and thereby causing

inconvenience to the public at large. It is also contended that if private vehicles are parked on the main road or the carriageways or the pavement, they are towed away by the Traffic Police or other authorities.

Learned counsel appearing for the Corporation very fairly stated that they would take action in accordance with the Policy and discharge their public duty in accordance with law.

3. In these circumstances, we direct the State Government, particularly through the Joint Commissioner (Traffic) to ensure that these vehicles are not permitted to obstruct the flow of traffic and are not parked at objectionable places particularly pavements, carriageways and main roads.

4. Before any directions or orders are passed in relation to these mobile advertising vehicles, it will be appropriate to issue notice to the owners of these vehicles. Registry to issue notices to these vehicle owners through the State and Corporation without any delay, returnable on 28th April, 2008.

5. Another aspect which has been contended at the Bar with some emphasis and certainly requires consideration of the Court is that the Corporation had been directed to conduct a survey and file affidavit about the advertisement hoardings which are violating the Policy of the Corporation and Laws in force. Specific directions were given in this regard in our previous orders. However, Mr. Singhvi, learned senior counsel

appearing for the Corporation submits that the affidavit is ready and can be filed during the course of the day. Though the affidavit was not filed within time, still we permit the affidavit to be taken on record.

6. From the affidavit filed by the Corporation, it is clear that certain hoardings are displayed beyond the period of licence and permission granted by the Corporation. It is also not disputed that some of the hoardings are infringing the Guide Lines as well as the conditions of license imposed by the Corporation. We, therefore, direct the Corporation to act expeditiously and ensure that such display hoardings will not be permitted any further. The Corporation will not be permitted any further. The Corporation shall take action in accordance with law.

7. There are also serious disputes, in regard to other hoardings, as to their location, their violating the Guide Lines and other laws for the time being in force. In view of the fact that the affidavit has been filed in Court today by the Corporation, we may not issue any further directions at this stage, but would give liberty to the petitioner and other concerned authorities of the State government to verify the status of the hoardings and alleged violations in the areas which are indicated in our previous orders. Liberty to the petitioner to file affidavit along with photographs and measurements taken on the site in question.

8. Let copy of the affidavit filed by the Corporation today be furnished to the learned counsel appearing or respective parties.

9. On oral request made by the learned counsel for the petitioner as well as averments made in para 12 of the affidavit filed on behalf of the Corporation today, Court notice be issued to both the Western and Central Railways through their General Manager, returnable on 28th April, 2008. Liberty to serve panel counsel granted. Learned counsel for the Western Railway accepts notice and waive service.

10. Learned counsel appearing for some of the parties brought to our notice that they have not been provided with all the documents which have been filed in the Court. Let the counsel concerned provide copies of affidavits to all other counsel appearing in these cases.

11. Stand over to 28th April, 2008.”

Order dated 3rd April, 2008 reads as under:

“1. The matter was not board. It was taken up on mentioning by Mr. Chinoy on behalf of the Mobile Advertising Agency. He had served the copies of the notice, however, according to some of the Counsel present in Court, they have not been given the complete set of the Notice of Motion. However, this is disputed by the Counsel appearing for the applicant. Be that as it may, we consider fit to get over the controversy, copy of the Notice of Motion may be furnished. They pray for some time to file reply affidavits. Reply affidavits to the Notice of Motion be filed with advanced copy to the

Counsel appearing for the applicant before the next date fixed for hearing.

2. Mr. Chinoy, learned counsel appearing on behalf of the applicants contended that they are being put to great loss and in the interest of justice, they should be heard at the earliest and the date fixed by the Court as 28th April, 2008 should be preponed. In the facts and circumstances, we prepone the hearing from 28th April to 10th April. This matter shall be taken up at 3 p.m.

3. The learned Counsel appearing for the non-applicant- petitioner in the main petition Mr. Chagla has argued before the Court that letter was written by the Commissioner of Police asking the Advertising Agency, referring the order of the Court, not to permit his vehicles to obstruct the flow of traffic, however, two days after, on 19th March, on the making of reference to the letter dated 17th March, 2008 being Reference No. O.W. No.03/Court/Plg/T/200 dated 17th March, 2008, the Commissioner has tried to overreach the order of the court and has, therefore, issued directions contrary to the court's order.

4. The learned Counsel Shri Singhvi appearing for the Corporation argued that in the letter dated 19th March, 2008, the Commissioner has mentioned only factual submissions, and submitted that from the bare reading of the letter as such there was nothing mentioned which would indicate that he had attempted to overreach order of the court. From the bare reading of the letter, it appears to us that the Commissioner has not been fair and as such,

attempted to note the order of the court to permit the vehicles to be parked at the roads or the carriageways and main roads.

5. Firstly, we do not see any occasion for the Commissioner to write such a letter to the Commissioner (Traffic) because the letter dated 17th March, 2008 was not even addressed to the Commissioner (Corporation). This undue incentive is certainly not accepted from an officer holding such a high office. Besides all these, we only make it clear, at this stage, we refrain from passing any order in contrary or otherwise of the Commissioner that the order referred to by the Commissioner in his letter dated 17th March, 2008 should be implemented by all concerned. The Corporation has no right whatsoever to permit parking of these mobile trucks carrying the advertisements in the middle of the roads, carriageways. However, we have already recorded that the applicant should be heard before passing any final orders in this regard.

6. List this matter on 10th April, 2008. Main matter shall also be placed on board on that day. We make it clear that DGP Traffic shall continue to ensure that there is compliance of the order of the court.

7. Another matter which has been mentioned today on behalf of the plaintiff is Long Cause Suit No.461/2008. It is stated that the Special Leave Petition filed by the plaintiff in terms of the order of the court dated 4th March, 2008 has been dismissed by the Supreme Court by orders dated 31st March, 2008. According to the learned Counsel for the

plaintiff, they had an interim order and therefore, they are praying that till 31st March, 2008, hoardings should not be demolished by the Corporation. On behalf of the Corporation, it is brought to the notice of the court that the advertisement's vinyl has already been removed and the frame is in the process of demolition. Parties to maintain status quo as of 1.00 p.m. As on today. We make it clear if the frame has already been cut, the same shall not be restored.

8. Suit filed shall also be placed on record. Notice of Motion No.459/2008 shall also be listed.”

15. From the above, it is clear that both the Notices of Motion relate to only mobile hoarding vehicles. Thus, in the present case, we are only concerned with the objection taken by the Applicants in respect of mobile hoardings vehicles and the two Notices of Motion have been taken out by the Applicants for vacating the Orders dated 13th March 2008 and 3rd April 2008.

16. At the time of passing of the above order, though Hoarding Association was represented various applicants thereafter intervened particularly, the owners of the mobile vehicular hoardings. They, in

fact, filed the above two motions for vacation of the above order and objected to its continuance. The arguments were heard and while reserving the case for orders, following order was passed by this court on 11th April, 2008:

“The arguments have been concluded. We must note that despite the fact that this case has been part-heard on different dates, respondent-State opted not to file affidavit. The Additional Commissioner of Police (Traffic), Mumbai who was present on the last date, is not present today.

2. As the arguments have been concluded by all concerned, we reserve these Notices of Motions for orders and also issue directions to the Additional Commissioner of Police (Traffic), Mumbai to file an affidavit clearly stating (i) as to how many permits have been given to the Mobile vans and how many mobile and hoarding vehicles are actually on the roads of Mumbai, (ii) whether actual sites on the roads or the carriage ways have been fixed by him or by the department. This affidavit shall be filed positively by Tuesday, 15th April, 2008. In the event of default in filing this affidavit, the Additional Commissioner of Police (Traffic), Mumbai shall be personally present in the court on the next date of hearing. Interim order passed by this court shall continue.

3. It shall be the responsibility of the Additional Commissioner of Police (Traffic), Mumbai

to ensure compliance of this order dehors the letter of the Commissioner of the Municipal Corporation of Greater Mumbai which the Commissioner ought not to have issued. We make it clear that no mobile vans will be parked on the main road so as to obstruct the traffic flow in Mumbai.

For arguments on the main petition, list on 21st April, 2008.”

17. The Municipal Corporation for Greater Mumbai by its letter dated 9.5.2007 has granted permission for display of advertisement on 10 Mobile advertisements hoarding on Vehicles/Lorries in City Zone i.e. from Colaba to Mahim and Sion on Municipal roads only. The relevant order communicated through the letter is as under:

“MUNICIPAL CORPORATION OF GREATER MUMBAI

No. SL/1981/LAD
09.05.2007

Office of the
Supdt. of Licences
Shree Chhatrapati Chivaji
Maharaj Market Building,
4th floor, Palton Road,
Mumbai- 400 001.

To,

M/s. Supri Advertisement & Entertainment Pvt.Ltd.
Flat 604, C-Wing,

Vaishali Nagar, MHADA Complex,
Saat Rasta, Mahalaxmi,
Mumbai- 400 016.

Sub: Grant of permission for display of advertisement on 10 Mobile Advertisements hoarding on Vehicle/lorries in City Zone i.e. from Colaba to Mahim and Sion on Municipal roads only.

Ref: Tender received from you, which was opened on 5.4.2007.

Sir,

By direction of Additional Municipal Commissioner (City) and without prejudice to rights and contentions of M.C./ M.M.C. I have to inform you that rights to display illuminated advertisement on Advertisement hoardings each of size 20' x 10' (double sided) on 10 vehicles/lorries in City Zone i.e. from Colaba to Mahim and Sion on Municipal Roads only are allotted to you being the highest bidder in tender for the period of 2 years i.e. from 21.5.2007 to 20.5.2009 for City Zone subject to the conditions mentioned below and following payments to be made on or before 19.5.2007 alongwith Bank Guarantee.

- (A) (i) Occupancy Charges for the period from 21.5.2007 to 20.5.2008 i.e. for the 1st year. Rs.5,40,00,000/-
- (ii) Advertisement fees for the period from 21.5.2007 to 20.5.2008 i.e. for 1st year. Rs. 11,54,400/-

(iii) 25% Security Deposit against advertisement fees.	Rs. 2,66,400/-
(iv) 10% Security Deposit towards 50% tender amount i.e. Occupancy Charges in D.D. or Pay Order	Rs. 27,00,000/-
Total	----- Rs.5,81,0,800/- -----

- (B) Submission of Bank Guarantee for an amount equivalent to 90% amount of Security Deposit of 50% Tender amount i.e. Occupancy Charges being the Guarantee towards requisite charges for the Second year. Rs.2,43,00,000/-

The aforesaid payment shall be made in the office of Asstt. Commissioner, 'G/N' Ward situated at Harishchandra Yevla Marg, behind Plaza Cinema, Dadar, Mumbai- 400028, between cash hours within 10 days and Bank Guarantee shall be submitted to the Sr. Inspector (Licence), G/N Ward/ H.C. (Revenue), G/N Ward.

CONDITIONS:-

- (1) The Bank Guarantee shall be submitted from the local bank having branch within city of Greater Mumbai alongwith aforesaid payment List of such approved banks is enclosed herewith.
- (2) You shall abide by all the conditions of "Terms and Conditions" of Tender which is attached herewith.

- (3) You shall submit NOC from RTA/RTO in advance prior to commencement of contract period.
- (4) All the conditions of NOC of RTA/RTO shall be strictly adhered to at all the time.
- (5) You shall submit an Undertaking-cum-Indemnity Bond on stamp paper of Rs.330/- for observing any orders of Hon'ble High Court in W.P. No.1132 of 2002 and also orders of any other Court and absolving MMC from any litigation.
- (6) You shall note that in terms of provision of section 65 (105)(zzzm) of Finance Act, 1994 read with section 67 ibid, space or Time Selling Services for Advertisement on buildings, Municipal Properties, Vehicles etc. are liable for payment of Service Tax @ 12.24% with effect from 01.05.2006. Hence, tenderer is liable to pay the same, through MCGM.

Thanking you,

Yours faithfully,

Sd/-

for Superintendent of Licences

- Encl:1) Copy of "Terms and Conditions"
2) Specimen of Undertaking
3) List of Banks."

18. We have already noticed that the power of the Corporation is

stated to be flowing from the provisions of Section 328 and 328A of the Act. According to the Applicants as well as the Corporation, in furtherance to the exercise of such powers, the licences/permissions have been issued vide letter dated 9th May 2007. In other words, the whole case of the Applicants as well as the Corporation is dependant upon the terms and conditions of the letter dated 9th May 2007 read with the guidelines framed by the Corporation in the year 2000 and/or 2008, as the case may be.

19. In the light of the above factual matrix, let us proceed to analyse the power of the Corporation and the rights of the applicants vis-à-vis the other laws in force. According to the Corporation, it has exercised its powers under section 328A. This provision vests regulatory and controlling power in the Corporation in relation to advertisements. No person can erect, exhibit, fix or retain any advertisement without the permission of the Commissioner. The Commissioner exercises such powers subject to the regulations

framed in that behalf in terms of proviso 2 to sub-section (1) of section 328A providing certain relaxation where such provisions may not be necessary. Sub-sections (2) and (3) of Section 328A states further restrictions in relation to hoardings, structures on the lands, walls and buildings etc. Emphasis was placed on the word 'structure' to contend that the wall hoarding was also covered and fall within the ambit and scope of power of the Corporation under this provision. Undoubtedly, sub-section (4) of section 328A states that the expression 'structure' appearing in the section shall include a tram, car, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium. For the purposes of discussion, we would proceed on the basis that Corporation has the power to regulate and control mobile hoardings on vehicles as stated in the provisions of the section. The expression 'Omnibus' and any other vehicle has to be given its correct meaning, which will be in conformity with the laws regulating the manufacture, registration and operation of such vehicles and traffic and environmental laws in force. Expression 'Omnibus' has been defined

in The New International Webster's Comprehensive Dictionary of the English Language, Deluxe Encyclopedic Edition, Trident Press International, 2004 Edition as "A long; passenger vehicle sometimes with two decks; a bus". The term "omnibus" is defined in Section 2 (29) of the Motor Vehicles Act, 1988 as any motor vehicle constructed or adapted to carry more than six persons excluding the driver. In other words, this does not include vehicle other than a passenger vehicle of two decks or a bus simpliciter.

20. Motor vehicle or vehicle both have been defined under section 2(28) of the Act. It means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of 25 cubic centimeters. In other words, vehicle which is to

be used on the road has to be in conformity with the requirements of the Motor Vehicles Act. No person has a right to alter a motor vehicle that to the particulars contained in the certificate of registration and at variance with those originally specified by manufacturer. Even in the cases of retrofitment and other matter for such conversion of kits, the Central Government is required to prescribe specifications and conditions for approval under section 52 of the Act.

21. The State Government is required to notify and determine the places at which motor vehicle may stand either indefinitely or for a specified period but in consultation with the local authorities in terms of section 117 of the Act. Admittedly, none of the places where mobile hoarding vehicles are parked have been specified in exercise of a statutory power. The mobile hoarding vehicles are parked dangerously in the places not declared by the State Government as parking places. Main road which has such tremendous pressure of traffic can hardly be specified as a parking

place whether temporarily or for a longer period, such vehicles may be parked. This power is vested in the State Government and not the Corporation. Section 122 prohibits the person in charge of a vehicle from leaving the vehicle or parking it in a dangerous manner so as to cause inconvenience to other users of the public places or to the passengers.

22. Any other vehicle should necessarily be understood in reference to the vehicles which have been manufactured by the manufacturer holding the proper licence and proper design and duly approved in conformity with law by the competent authority in the Central and/or State Government. We shall shortly proceed to discuss this aspect with some elaboration. In furtherance to exercise of this power, the Corporation has admittedly, entered into contract and granted permissions and licences to the applicants. For example, in the present case, vide letter dated 9th May, 2007, permission for display of advertisement on 10 mobile advertisement hoardings on vehicles was allowed in the area of Colaba, Mahim,

Sion including Marine Drive. The conditions imposed under the letter are common to all the cases. They were admittedly, relatable to the policy guidelines framed by the Commissioner in the year 2000. In terms of condition 3, the applicants were required to submit the No Objection Certificate from RTA/RTO in advance prior to the commencement of the contract and all such conditions were required to adhere to by the applicants.

23. The terms and conditions of the tender were also part of the above letter and were required to be strictly obeyed by the successful tender. As per the terms and conditions, the permit/permission was granted to operate the mobile van. (Emphasis supplied). In terms of condition 7, these could be permitted in the concerned zone subject to No Objection Certificate from traffic police. The discretion was vested in the Corporation to a larger extent. All the terms and conditions communicated by traffic police shall be strictly observed. The following clauses of these terms and conditions can usefully be reproduced at this stage:

10. The mobile van shall not be kept stationery at any intersection or road within the distance of 25 meters from the stop line.
11. Except at inter section/stop line mobile van can be allowed to keep stationery for two hours only at particular spot subject to N.O.C. from Traffic Police.
12. The mobile advertisement shall not block the view of existing permitted hoardings and traffic signals and light, air and ventilation of occupants of any building at all the times.
13. No van shall be parked near any building having archaeological, architectural, historical or heritage importance. Further, Mobile vehicles with advertisement shall not be parked within any listed Heritage Precinct or within any proposed Heritage Precinct or near any listed Heritage Building blocking the view of the same. Vehicles shall also not be parked in any Coastal Regulation Zone-I.
14. No neon or blinking or flashing or computerized display such as L.E.D. signs shall be permitted on mobile hoarding.

24. As is clear from the above stated terms, besides keeping the discretion the permission could be revoked on any

complaint or where it violates law, regulations or guidelines and the applicants would not be entitled to any damages from the Corporation. The expression used in all these clauses is a mobile van and it is also clear that it should not in any way block the view of the heritage buildings and the Municipal Corporation has reserved its rights to cancel the permission or to modify the same. The various terms and conditions of the tender as well as letter clearly demonstrate that the permissions granted are subject to other laws and particularly, the Motor Vehicles laws, Police Act and traffic rules and laws relating to environment and heritage precincts. In furtherance to the applications submitted for awarding of the tender, the applicants had obtained No Objection Certificates from the traffic police and the RTO. In the No Objection Certificate granted by the police, in some of the cases, they were permitted to park the 10 mobile hoarding vehicles at five different spots at Marine Drive, Churchgate, near Fountain, near Jahangir Art Gallery. All these places are places of heritage and there are various buildings, the view of which is bound to be blocked as a result of their parking in those places. The No Objection Certificates granted by the

police as has placed on record interalia imposes the following three conditions:

- (i) These vehicles should not obstruct traffic or should not violate traffic rules.
- (ii) These vehicles should be parked only on the given places and they should not be parked for more than two hours at the same place.
- (iii) These vehicles should not obstruct the view of boards displaying traffic rules and Messages Variable Systems, historical buildings/places.

25. Even under these permissions, power was reserved upon the authorities for withdrawal/ cancellation of the No Objection Certificate. Thus, a contract even if taken to have been validly executed is circumvented by limitation of other laws and by such regulations which may be framed by the concerned authorities.

These permissions, obviously, would be withdrawn if they are violative of law in force as well as are against public interest, adversely affects environment, block the traffic and otherwise are hazardous being not in consonance with law and public welfare. First of all, we must

examine for what purpose these permissions were granted. As already noticed, these permissions were granted for mobile vans. There is hardly any occasion for explaining the term 'mobile'. However, the expression 'van' must be understood in its correct perspective and in accordance with law. The New International Webster's Comprehensive Dictionary of the English Language, (Deluse Encyclopedic Edition, Trident Press International, 2004 Edition) gives meaning of the word 'van' as "A large covered wagon or vehicle, for removing furniture, household goods, etc., a caravan. Concise Oxford English Dictionary, (Indian Edition, Eleventh Edition, Edited by Catherine Soanes Angus Stevenso) also explains the word 'van' as a covered motor vehicle used for transportation of goods or people or a railway carriage for conveying luggage, mail etc. while the Concise Oxford Dictionary, Ninth Edition, Thumb Index Edition states that 'van' means a covered vehicle for conveying goods and is an abbreviation of caravan.

26. The Free Online Dictionary

([www.thefreedictionary.com /p/van](http://www.thefreedictionary.com/p/van)) also explains the word `van' as 1
(a) An enclosed boxlike motor vehicle having rear or side doors and side panels especially for transporting people, (b) A covered or enclosed truck or wagon often used for transporting goods or livestock. (2) Chiefly British A closed railroad car used for carrying baggage or freight. A camper equipped with living quarters caravan camping bus, motor home, camper- a recreational vehicle equipped for camping out while traveling. A truck with an enclosed cargo space.

27. Even in common parlance, the expression `van' is understood as a vehicle which is closed either completely or partially (providing window, door etc.) and is certainly not referable and construed as an open truck or an open vehicle which is carrying a structure of an advertising hoarding tightly inserted on a pillar.

28. The Free Online Dictionary ([www.thefreedictionary.com/p /van](http://www.thefreedictionary.com/p/van)) even gives the picture of the vehicle which within the correct concept of the term can be referred to

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and called a `van'. It is incapable of being related to an open vehicle
much less the vehicles having hoardings in question, the photographs
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of which have been placed on record. We have no hesitation in
straightaway coming to the conclusion that these are not vans and
are vehicles built in violation of any accepted norms, laws, rules and
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regulations. In fact, they violate all the provisions and cannons of
jurisprudence relating to vehicular traffic, environment and
particularly, the provisions of the Motor Vehicles Act.
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29. Another very important aspect of the matter is
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source of power with the Corporation and other authorities. Except
section 328A of the Mumbai Municipal Corporation Act, no other
provision was referred to or brought to the notice of this court which
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has even remote concern on the matter in issue in the present case.

Of course, reference was made to the provisions of sections 313 and
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314 of the Mumbai Municipal Corporation Act, wherein the
Corporation has power to remove without notice anything erected,
deposited or hawked in contravention to the provisions of sections
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312 to 313A. Those provisions have no bearing on the power of the Corporation to issue such permission/licences. It was a commonly stated case of all the parties before the court that there is no other provision except under section 328A empowering the Corporation in this regard. Furthermore, in exercise of powers under proviso to section 328A, the Corporation has not framed any regulations or rules, The so-called policies are a mere guidelines framed by the Commissioner for exercising the alleged discretion vested in him under section 328A of the Act. These guidelines which have been framed by the Commissioner for his own convenience do not and cannot have any force of law per se. They are nothing but guidelines prepared for exercise of administrative power by the authorities concerned. In the case of Talmakiwadi Co-operative Housing Society Limited v. Divisional Joint Registrar, Co-operative Societies, Bombay, 1999 (1) Mh.L.J. 406, the Supreme Court even held that even the Bye-laws of the society do not have the force of law.

30. Still another ancillary but important question that we should deal with is that granting of these permissions and formulation of guidelines either of the year 2000 or 2008, are apparently in conflict with different laws relating to traffic, motor vehicles, environment and regulation of heritage precinct. We would even say that there is somewhat non-application of mind by the Commissioner while framing these regulations by these guidelines. Certainly, the Corporation may have a desire to generate revenue but it cannot frame guidelines exclusively for that purpose or with only that object in mind. It is expected to act in larger interest of the public and certainly in conformity with the other laws for the time being in force. The Commissioner in his over anxiety even when the matter was subjudice, issued letter dated 19th March, 2008 practically diluting the interim order of the court. Such attitude is not expected from a high authority in the hierarchy of the Corporation.

31. Besides the above, now we may even for the sake of arguments accept that the applicants have some legal right to

operate the mobile hoarding vans and consider the arguments. Of course, such permission is obviously, subject to strict compliance to the conditions which have been stated therein. The No Objection Certificate from RTA/RTO and police authorities was a condition precedent to operation of the contract. Furthermore, those NOCs themselves imposed further condition on the applicants. It is the case of the petitioners-non applicants before us that these conditions have only been adhered to in violation alone. There are violations of both, mandatory and directory conditions but the Corporation intentionally has taken no action in relation to these mobile van hoardings.

32. We have already held that these vehicles are not vans. The applicants claimed to have produced NOC from the registering authority. The photo copies of such documents were placed before us in relation to vehicle under registration No.MH-12EF-1456 dated 27th August, 2007, a vehicle manufactured by Ashok Leyland, Madras was registered with the RTA. Following information described in Form 23 in reference to Rule 48 by the registering authority of

Maharashtra which relevantly, can be referred; i.e.

Class of Vehicle - Medium Goods Vehicle

Maker's Class- LCV Goods Display Vehicle

Vehicle Description, Type of Body - Van

Pick up.

33. A certificate of fitness in terms of Form 38 with reference to Rule 62(1) was also issued for this vehicle on 29th August, 2007. Another form with reference to Rule 72(1)(v) was issued in relation to this vehicle and the registering authority had registered this vehicle with the following particulars:

1.Name of Holder/Company : M/s. Supri Advt. & Ent. Pvt.Ltd.

2.Model : MH-12EF-1456

3.Usage/Purpose : Carrying General Goods

4.The route or routes of the Area/States/union Territories for which Permit is valid : Maharashtra State

5. Seating capacity : 3 Load capacity(Kg): 5620

34. With the above particulars of registration of the vehicle, the applicants had taken out Insurance Policy for the vehicle. These documents clearly show that the vehicle was neither certified nor registered as an open mobile advertising vehicle. On the contrary, the vehicle was a pick up van to be used for carriage of goods which, in fact, is the correct meaning and use of a van. The certifying authority also certified the vehicle as a van pick up a vehicle to be used for carriage of goods, LCV Goods Display Vehicle and it is pertinent to note that in the registration form, besides it being called so and permit being issued as `Goods Carriage Permit' in terms of Rule 72(1)(v), it was also noticed in Column 10 that it has seating capacity of three and load capacity of 5620 kgs. The user of the goods was, "Carrying General Goods". In other words, neither the Corporation nor any authorities had examined the matter in its correct perspective and in accordance with law. It is a settled principle of law that written documents issued in normal course of business of the

Government and its authorities should be taken to be correct. We are unable to believe the version of the applicants that these were the vehicles as shown in the photographs and record which were produced for inspection before the authorities concerned in the shape in which they exist as of today.

35. Another very pertinent aspect of the matter is that the height of the vehicle as it exists today was never noticed by any of the authorities. Such a height of a vehicle is impermissible under law which we will shortly discuss. It would be a very normal expectation from the Corporation that it ought to have framed regulations in terms of proviso to section 328A and that too after taking all the relevant laws into consideration. This has admittedly, not been done by the Corporation. The guidelines alleged to have been framed for his own convenience by the Commissioner, lack proper consideration and are even offending the various laws in force. The Commissioner for reasons best known to him, in the conditions of tender, guidelines and even in the permission issued to the applicants made no reference to

what kind of vehicles and what kind of mobile hoardings they are permitted to operate during the period of the contract. A vehicle essentially had to be a vehicle acceptable in law and not any vehicle in the wisdom of the highest tenderer. Hazardous effect on public life, traffic, environment and need of the city are the basic parameters which ought to have been considered by the Commissioner before even issuing these permissions which are in the cyclostyle form while being opposed to basic laws. While the matter was pending before the court, the Commissioner acted in an arbitrary manner. While he received the letter from one of the applicants on 12th September, 2007 where the applicant had requested that he be permitted to park four mobile vans in the Pay & Park areas as there was no ban in the tender conditions to park these vehicles parking lot. This application was allowed by the Commissioner on the same day, thus, expanding the scope of the terms and conditions of the tender and area of operation allotted to the applicants. This we have noticed only for the purposes of reference to show that by the issuance of the letter dated 19th March, 2008 by the Commissioner was inclined towards diluting

the effect of the interim orders passed by the court. We would leave this matter at that.

36. We have already discussed above that the registration and certificate of fitness produced by the applicants and which is similar to all other cases, prima facie, and in fact, does not confirm to the kind of mobile hoarding vehicles which are being plied and parked on the roads, carriage ways etc. We must notice that different paper-cuttings have been filed by the non-applicants on record alongwith the photographs. These paper-cuttings also show that traffic hazard, inconvenience and environmental and heritage infringement is being resulted from these hoarding vehicles. The photographs on record and the affidavit of the applicants clearly show that these vehicles are being parked on the roads in the carriage ways and they stand there for hours together. This is one of the facets of the multi-faceted problems and violation of laws resulting from these so called mobile hoarding vehicles.

37. Let us examine whether these vehicles even otherwise are in conformity with the provisions of the Motor Vehicles Act and have been manufactured in consonance with the provisions of the Motor Vehicles Act and with the approval of the competent authority.

38. Section 41 of the Motor Vehicles Act requires that every vehicle shall be registered with the registering authority in accordance with the provisions of Chapter IV of the Act. In fact, an unregistered vehicle cannot be driven on the road in terms of section 39 of the Act. The registering authority is called upon to issue to the owner a certificate of registration. Provisions of section 41(4) require that in addition to other particulars required to be included in the certificate of registration, it shall also be specified the type of motor vehicle being a type as the Central Government may have regard to the design, construction and use of the motor vehicle by notification in the official gazette specify. In furtherance to these provisions, notification dated 4th November, 2004 was issued by the Government of India in supersession of the earlier notifications specifying the type of motor

vehicles, as mentioned in Columns 1 and 2 of the table for the purposes of sub-section (4) which reads as under:

TABLE

Transport Vehicle (1)	Non-Transport Vehicle (2)
(i) Motor cycle with side car for carrying goods.	(i) Motor cycle with or without side car for Personal use
(ii) Motor cycle with trailer to carry goods	(ii) Mopeds and motorize cycle (Engine capacity exceeding 25cc)
(iii) Motor cycle used for hire to carry one passenger on pillion and motorized cycle rickshaw for goods or passengers on hire	(iii) Invalid carriage
(iv) Luxury Cab perso-	(iv) Three wheeled vehicles for -nal use

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|---|---|---|
| (v) Three wheeled vehicles for Transport of passengers/ goods | (v) Motor car | a |
| (vi) Goods carrier trucks or Tankers or mail carriers (N1-N3 category) | (vi) Fork lift | b |
| (vii) Power tiller and Tractor Using public roads | (vii) Vehicles or trailers fitted with equipments like reg, generator, compressor | c |
| (viii) Mobile clinic or X-Ray van or library vans. | (viii) Crane mounted vehicle | d |
| (ix) Mobile Workshops | (ix) Agricultural Tractor and Power Tiller | e |
| (x) Private service vehicle | (x) Mobile canteens registered in the name of an individual and if declared to be used by him solely for personal | f |
| (xi) Private Service Vehicle | (xi) Camper van or trailer for private use | g |
| (xii) Public Service Vehicle such as maxi cab, motor cab, stage carriage and contract carriage including tourist vehicles | (xii) Tow trucks, Break-down Van and Recovery Vehicles | h |

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|--|--|
| (xiii) Educational Institution buses | (xiii) Tower Wagons and tree trimming vehicles owned by Central, State and Local authorities |
| (xiv) Ambulances | (xiv) Construction Equipment Vehicles as defined in Rule (2)(ca)* |
| (xv) Animal ambulances | |
| (xvi) Camper vans or trailers | |
| (xvii) Cash vans | |
| (xviii) Fire tenders, snorked ladders, auxiliary trailers and fire Fighting vehicles | |
| (xix) Articulated vehicles | |
| (xix) Hearses | |
| (xx) Omnibus+ | |

39. The open mobile advertising vehicle is nowhere stated as a specified vehicle which can validly be registered by the

registering authority in terms of the said provision. That is the precise reason why the certificate of registration, fitness certificate and the forms issued in favour of the applicants did not describe the vehicle as open mobile advertising vehicle and restricted its user only for carriage of goods and for no other purpose. Either the petitioners have made misrepresentation before the authorities concerned or the authorities have exercised their power while shutting their eyes to the facts and with callousness.

40. Chapter VII of the Motor Vehicles Act relates to construction equipment and maintenance of motor vehicles. A vehicle is required to be specified in the official gazette which will provide as to what design of a vehicle with what width, length, size with its minute component will be included in the schedule. In other words, the gazetted vehicle has to conform to the manufacturing specification as may be directed by the Central Government under section 110. Under the provisions of section 110 of the Act, the Government has the power to make rules regulating the construction, equipment and

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maintenance of motor vehicles. In other words, every manufacturer of vehicles has to bring his manufacturing activity within the approval granted by the competent authority in the Central Government and the vehicle so manufactured essentially must be in conformity with the specifications provided in the regulations in relation to width, height, length overhang of vehicles, brakes, steering, signal equipments, use of glasses, lights, dippers, provisions of goods of different quality. However, under sub-section (3) of section 110, the appropriate Government, the Central or State Government has the power to exempt any vehicle from the operation of these provisions. There is no document placed by any of the parties before the court showing that these vehicles have been manufactured in consonance with the specified under the regulations framed by the Central Government under section 110 of the Act. The open mobile hoarding vehicles besides not being a specified vehicle under the notification of the Government is also in fragrant violation to the rules relating to construction, manufacturing and maintenance of the vehicles.

41. Chapter V of the Central Motor Vehicles Rules, 1989 (hereinafter to be referred to as the `Central Rules) and Chapter VII of the Maharashtra Motor Vehicles Rules, 1989 (hereinafter to be referred to as the `State Rules') are the provisions framed by the Central and State Governments respectively in exercise of the powers vested upon them under sections 110 and 112 of the Motor Vehicles Act.

42. Under Rule 92 of the Central Rules, it is prohibited to use any motor vehicle at any public place which does not comply with the requirements of Chapter V. Rule 93 provides for specification of overall dimensions of motor vehicles. In terms of Rule 93(4)(i), the height of motor vehicle other than the double-decker shall not exceed 3.8 meters. Apparently, as is even clear from the photographs placed on record, the height of these mobile hoarding vehicles is much in excess to the specified height. The vehicle itself does not appear to be in conformity with the other dimensions of the motor vehicle in terms of Rule 93.

43. These vehicles, as is demonstratively clear from the photographs on record have number of reflector lights of high power fixed so as to illuminate the hoarding advertisement in a very bright manner. Central Rules 105 to 111 deal with and provide for the specification of lamps, reflectors of lights, top lights on a vehicle etc. Besides that, no vehicle is permitted to carry any other light except the lights in front of the vehicle with parking lights and indicator lights. These vehicles have seven reflector lights of high voltage on either side of the advertisement hoarding and that too at a height which is impermissible under the provisions relating to Motor Vehicles Act and Rules. At pages 76 and 77 of the paper-book of notice of motion Nos.155 of 2008, the motor vehicle with a cross lift has been shown to carry an advertising hoarding at an impermissible height and carries large number of reflector lights. Even the photographs placed on record by the applicants themselves exhibit nothing different than what we have noticed. Except for the notified vehicles, no vehicle can carry red, white, blue lights on top of the vehicle. If that be the intent

of law that even on the roof or top of the ordinary vehicle or car, law prohibits carrying on any light, how the Corporation, police and for that matter any authority could permit 12 to 14 flood lights to be used at such a height that too on a vehicle which otherwise is an unspecified vehicle.

44. Vehicle in terms of Rules 123 to 125A is expected to have safety measures and devices not only for the vehicle itself but even for the road users. Rule 126 of the Central Rules deals with the requirements which a manufacturer must satisfy and seek approval of certification of motor vehicle for compliance to these rules. No certificate of this kind has been produced on record. In fact, for the vehicle to be manufactured or imported, the vehicle is to be placed for testing before the Research and Development Authority of the Ministry or the Automobile Research Association of India or the Central Machinery Testing and Training Institute, Madhya Pradesh and other specified institution for obtaining the certificate of manufacturing. Even the manufacturer's certificates have not been

placed on record. Of course, the applicants may have got the chassis or a specified vehicle from the manufacturer and then may have converted the vehicle for their own use and for commercial activities in violation of the rules indicated. The roadworthiness certificate is to be provided by the manufacturer in terms of Rule 127 which again has not been filed on record to show that the vehicle in the present design was ever produced by the manufacturer and they were stated to be in conformity with the law and were roadworthy. The State rules are even more stringent than the Central Rules. Under Rule 160 of the State Rules, use of any vehicle in any public place which does not comply with the rules contained in Chapter VII or Central Motor Vehicles Rules or any order passed by the competent authority is prohibited. Framing of rules under the State rules is primarily para materia to the Central Rules. Rule 163 even contemplates that in case of any projection which may be dangerous or otherwise, will not be permitted. None of the authorities that is the registering authority, Municipal Corporation and for that matter, even the traffic police even bothered to care that there was compliance to all these provisions

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before granting NOC. It is obligatory on the part of the State authorities to inspect the vehicle and to ensure that the statutory provisions are complied with and no certificate is issued, in its violation the vehicle is not registered in violation to the rules and every care is taken for proper regulation even of the specified vehicles. It is a matter of great concern that the authorities concerned have power to issue certificates of the present kind in relation to an unspecified vehicle. In terms of State Rule 206, an application is required to be moved by the applicants to the Director of Industries in respect of a model of producer showing clear drawings, instructions, size and other specifications and it is only after inspection and test in such laboratories or workshop as the Director of Industries may specify, the model of such applicant is approved. The approved model has to satisfy the requirements of various provisions and then alone it can be manufactured.

45. Periodical inspection of such vehicle is mandatory. We really do not understand that if the applicants have

misrepresented the facts at the initial stage why they were not discovered by the authorities at subsequent stage at the time of periodical inspection. In fact, this inaction of all the authorities concerned is unexplained and in law, inexcusable. It is nobody's case that any application for exemption as contemplated under Rule 93 were ever made and any Central or State Government had granted exemption to these vehicles at any point at the stage of manufacturing or obtaining certification of roadworthiness or that their dimensions, construction is in conformity with the relevant regulations. Reverting back to the role of the police, there is no doubt that these vehicles are being parked on the main roads as well as on the carriage ways which admittedly, are having tremendous pressure on traffic should have attracted attention of police. Besides the fact that this is duly demonstrated by the photographs placed on record that these vehicles are causing traffic hazard and obstruction to free flow of traffic is clear from the photographs placed at pages 98, 100, 101, 102, 103 and 76 to 82 of Notice of Motion No. 155 of 2008. It neither stands to logic nor to law that these vehicles could be permitted to

cause such great inconvenience to all concern and the authorities would turn deaf ear to this practical problem visible on the roads of Mumbai. In terms of section 206 of the Motor Vehicles Act, the police officer has the power to impound documents if a false document or incorrect document is produced. Further, as per section 207, the police officer authorized by the State Government can even detain a vehicle used without proper certification and is in contravention to the various provisions like sections 3, 4 and section 39 of the Act.

46. Chapter IV of Bombay Police Act places the statutory obligation upon the Commissioner to regulate traffic and to preserve order in public places and also empowers him to make rules in that regard. It is required of this authority to regulate the conditions under which vehicle may stand in street or public places. Wide powers have been given to the authorities to ensure that the entire matter is regulated in accordance with law. Under section 102 of the Bombay Police Act, it is the duty of the police to see that no person shall cause obstruction in any street or public places by a vehicle

which is even to be loaded or unloaded or to take passengers. It should not remain there for any period longer than which may be necessary. The vehicles in question were shown as goods carriage vehicles and, therefore, ought to have been regulated strictly in accordance with this provision by the police. Besides the police even the registering authority is vested with the power of revoking the licence or suspending the licence or permission granted in terms of section 28 of the Motor Vehicles Act.

47. These mobile hoarding vehicles thus, are infringing the requirements of law in regard to manufacturing, design, construction and maintenance. The description of the vehicle do not coincide with the particulars given by the authorities in the certificates of registration produced by the claimants themselves. In the affidavit of non-applicant (petitioner) dated 9th April, 2008, a newspaper article being Exhibit `F-4' to that affidavit is placed on record to state that against the limited permission granted by the authorities the number

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of vehicles actually on road are much higher. Further, in the said affidavit, certain averments have been made in para 10 stating that permission granted for parking of the mobile hoarding vehicles was at the spots/places which are included in proposed and listed heritage precincts. Firstly, the stand of the State Government was quite uncertain but later on in furtherance to the specific order of the court, affidavits were filed by police officers wherein it is stated that NOCs have been granted to 55 vehicles for 96 locations. Further, in their said affidavits, they have denied that there are no vehicles on road as on the date when the said affidavits have been filed. We consider it unnecessary to go into this controversy.

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48. In the case of *ICICI Bank and another vs. Municipal Corporation of Greater Bombay and others*, 2005 (6) SCC 404, the Supreme Court while clarifying the powers of the Corporation stated that Sections 328A and 328 operate in different fields and do not completely overlap. While treating commercial interest as the basis for invocation of such powers, the Court stated that it cannot be said that

signboards including ATM centres were treated as sky signs and this was not covered under section 328. This itself shows that powers of the Corporation under section 328A are not all omnibus. The Corporation cannot transgress limitations imposed by law in exercise of its powers under section 328A and infringe it in complete disregard to the laws in force and cause public inconvenience and hurt environment. Even otherwise, it is a settled principle of administrative law that exercise of powers stemming from the legislation has to be exercised carefully, upon due application of mind and inconsonance with the provisions of the relevant laws in force. The Corporation is an appropriate authority or a body which is expected to improve public facilities and develop a city or a town to the best of its means but certainly within the prescribed limitations of law.

49. In the case of *Bharat Petroleum* (supra), the Supreme Court stated that in construing a provision of a statute or the words or language used, it has always been considered essential for the court normally to give effect to the natural or ordinary meaning of the words,

keeping in view the subject matter with regard to which the words are used. The main and salutary purpose of sections 328 and 328A was said to be regulatory, to regulate installation/construction of signboards of the nature defined and envisaged therein to keep road margins and space above such margins not indiscriminately meddled with so as to affect the free movement and free flow of traffic, preserve the ecology and environment by averting and regulation to the extent required, ensuring in public interest adverse physiological and psychological impacts either directly or indirectly due to the use of neon lights/illuminations, etc.

50. This dictum of the Supreme Court thus leaves no doubt that all the powers of the Corporation under these provisions must fall in comity to the laws in force as well as it is the duty of the Corporation to protect environment, archeology and heritage. Environment is one of the basic essentials which ought to remain as a serious consideration for the Corporation while it is discharging its duties and exercising its powers under the provisions of the Act. As already

noticed, Municipal Corporation is a body created primarily for public well being and public welfare. In the case of *T.N. Godavarman vs. Union of India*, (2002) 10 SCC 606, “environment” was stated to be a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever objects it is which is surrounded. Einstein had once observed that environment is “everything that isn't me”. The word “environment” is a broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance”. It is therefore not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The Environmental Protection Act, 1986 also defines word “environment” as to include water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. “Environmental pollutant” would mean any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to environment.

51. The laws relating to environment and environmental protection can hardly be static. Stated in the words of Lord Woolf, “while environmental law is not clearly a permanent feature of the legal scene, it still lacks clear boundaries”. This will develop its boundaries by judicial decisions as the law develops.

52. In *M.C. Mehta vs. Union of India and others*, (1991) 2 SCC 137, while referring to ecology and environmental pollution, the Supreme Court had not only directed measures to be taken for checking pollution but had even suspended the registration of the vehicles in accordance with the provisions of Rule 115(6), 126 and 127 of the Central Motor Vehicles Rules, 1980 to ensure that the environment is protected and the vehicular pollution is prevented. It is also a settled principle of law that a State or a public authority cannot conclude legislative intendment or nature of enactment by making a particular pleading on its behalf. It is a matter of interpretation and construction by the Court in the light of the attending circumstances. (Reference may be made to the case in

International Tourist Corporation vs. State of Haryana (1981) 2 SCC 318). All we are trying to emphasize is that it is expected of the Corporation and other public authorities to act in consonance with law and not to assume powers which are not legislatively intended and are even in conflict with substantive laws.

53. A policy statement on "Unapproved Motorway and Roadside Advertising" was declared and certain recommendations were made by ENCAMS (www.encams.org). Besides requiring the authorities and the owners to comply with planning regulations and laws, it also sought to remove advertisements which were hazardous. Referring to the problem arising therefrom, it was said that the problem was significant as it adversely affects how an area looks, contravenes planning laws and is unpopular with motorists as advertisements cause dangerous distraction.

54. State Victoria again referring to the policy for roadside signs and advertising declared that it is necessary to have road safety

checklist and is treated to be hazardous if it obstructs a driver's line of sight at an intersection, curve or point of egress, etc., can dazzle or distract driver's due to its size, design or colouring, illumination, reflection as insufficient clearance from vehicles on carriage way and can even mislead a driver.

55. Under the Australian law in the Main Roads Act, 1930, section 33B requires the competent authorities regulating and controlling advertisement to ensure that such advertising structures are not hazardous to traffic safety and are not aesthetically objectionable.

56. The preference of adherence to law, regulations and public safety over commercial advertising is an internationally accepted norm. Public safety and proper regulation of traffic is the essence of Motor Vehicles Act, Central and State Rules thereunder. It will not serve the ends of law and public interest if these laws are rendered nugatory by the Corporation and other authorities in exercise of their

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powers which in any case are limited in scope and that too are
exercised without proper application of mind. Violations of different
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provisions of the Act and the Rules framed thereunder relate to
construction, equipments and maintenance of motor vehicle, fixation
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of lights, height and dimensions of the vehicle and dangerous
projections. It does not end there. The very designing and
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construction of these mobile hoarding vehicles is without any proper
approval and certification from the concerned authorities in the State
and/or Central Government, as the case may be. Registration and
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permission to park and drive such vehicles on the road apparently has
an adverse effect on the heritage precincts, flow of traffic, public
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safety and heritage aesthetics of Mumbai. Vehicles of impermissible
height carrying 12 to 14 flood lights again in an impermissible manner
are bound to reflect in the eyes of the drivers of other vehicles.
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Besides distracting others, they are capable of dazzling eyes of the
drivers of the fast vehicular traffic. We have no reason to discard the
contention raised and which is sufficiently demonstrated by the
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affidavits and documents annexed thereto that these mobile hoarding

vehicles besides violating laws are afore-referred are also obstructing the free flow of traffic and causing public inconvenience on the busy roads of Mumbai. It is strange that permissions have been granted in relation to parking on roads and carriage ways even near and in heritage precincts like Marine Drive and Fort areas, etc. Normally these are the heavy traffic roads and the authorities have granted permission to the Applicants, who in turn claim a legal right to block the traffic for hours on these roads of Mumbai. To add to all this is the unjustifiable conduct of the Applicants that they have obtained the registration certification from the authorities by misrepresentation of facts. If the vehicles in the present status were produced before the authorities for inspection, then it remains to be examined as to why correct particulars of the vehicle were not mentioned in the certificate, manufacturer certificate as well as on the registration certificate in regard to user and specifications. If only the chassis were produced for inspection and were registered in accordance with law, then how thereafter the vehicles have been altered, constructed and equipped to the present mobile hoarding vehicles without approval of the

competent authority particularly when they are in violation of the statutory provisions as referred above. The photographs on record and affidavit filed clearly show and it is a matter of common public knowledge that these `mobile hoarding vehicles' adversely affect the look of the area concerned, contravene the laws, are unsafe and infringe canons of public safety, protection of heritage precincts and even the environmental laws. It is a matter of public knowledge that there is heavy traffic on the roads of Mumbai, particularly in the areas where permissions have been granted. It takes considerable time to reach from one point to another by vehicular traffic. The permissions granted by the authorities to deal with vehicles to be parked on the busiest roads of Mumbai for hours is certainly not a proper exercise of power. This itself is a question whether mobile advertisement through such vehicles which are unspecified vehicles and which are offending practically all provisions of the Motor Vehicles Act and the Rules framed thereunder, would fall within the Municipal Corporation's domain to grant permissions or contracts in exercise of its powers under Section 328A of the Act.

57. A Bench of the Delhi High Court in the case of *Outdoors Communication vs. Municipal Corporation of Delhi and another*, (L.A. Nos.12168/2006 and 553/2007 in CS (OS) No.2055/2006) decided on 3rd May 2007, while dealing with the advertisement hoardings and their impact on environment and other laws, while relying upon the different judgments of the Supreme Court and the Policy on Roadside Advertisements published by the Indian Roads Congress, 1992, held as under :

“This policy in public interest permits relaxation of the controls and permits installation of official warnings, signs, traffic directions, sign posting, and notices and advertisements posted or displayed by or under directions of any public or court officer in the performance of official or directed duties; direction signs to places of public mandates such as petrol pumps, first aid posts, police stations, fire stations and such like advertisements.

Judgments, orders and directions of the Apex Court.

33. In order to adjudicate upon the respective contentions, it becomes necessary to first notice the directions of the Apex Court.

34. **Shri M.C. Mehta Vs. Union of India, Writ Petition © No.13029/1995** was filed before the Apex Court relating to proper management and

control of traffic in the national capital region and the national capital territory of Delhi to ensure maximum possible safeguards which are necessary for public safety. The need for urgent measures to prevent any further delay in enforcement of at least the existing provisions of law was noticed to be imperative which was accentuated by the alarming rise in the number of road accidents and the resulting deaths and bodily injuries caused thereby. The court also took note of the tragedy in which a school bus broke the parapet of a bridge and fell into the river a few days before the judgment was passed by the court. In its judgment delivered on 20th November, 1997 which has been reported at 1997 (8) SCC 770, the court had observed that keeping in view the seriousness of the issue, the Chief Secretary of Delhi and the Police Commissioner and the Commissioner (Traffic) had been joined in the proceedings to examine the matter at length. So far as interpretation of the existing statutory provisions to control and regulate road traffic is concerned, the court specifically noticed that **“it needs hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual rights have to be concluded.”**

35. Emphasising the urgency of the matter and the expressed inadequacy of the action on their part, the court considered the statutory provisions at length and had observed thus:-

“14. It is needless for us to add that the entire scope of this matter and

particularly this aspect to which this order relates, namely, the control and regulation of traffic in NCR and NCT, Delhi, is a matter of **paramount public safety and, therefore, is evidently within the ambit of Article 21 of the Constitution.** That being so, the making of this order has become necessary and can no longer be delayed because of the obligation of this court under **Article 32 of the Constitution which is invoked with the aid of Article 142 to give the necessary directions given today separately.**”

36. After so observing, the court passed detailed directions in exercise of the power of the court under Article 32 read with Article 142 of the Constitution of India. So far as the issues raised before this court are concerned, the following directions given by the court is required to be considered in extenso:

(i) The civic authorities including DDA, the Railways, the police and transport authorities, are **directed to identify and remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement. In addition, steps be taken to put up road/traffic signs which facilitate free flow of traffic.**”

58. For the purpose of reference and to analyze the standards

applicable for adherence to these rules, regulations, and public safety and public interest, usefully reference can be made to the fact that even a Bench of Punjab and Haryana High Court in the case of *Namit Kumar vs. U.T. Chandigarh* (Civil Writ Petition No.2639 of 1995) decided on 9th July 1998, had passed various directions in regard to regulatory measures including removal of hoardings and advertisements facing the city roads and the highway. This judgment was assailed before the Supreme Court in *Chandigarh Administration and others vs. Namit Kumar and others*, (2004) 8 SCC 446. The Supreme Court did not set aside or quash the directions, but, however, granted liberty to the State Government or licensees to bring to the notice of the High Court that there is no safety hazards involved and High Court shall consider such request on merits of each case. It may also be mentioned here that under the National Highway Act, no structures can be raised within 30 metres of brim of the road. All these legal provisions and judgments of the Courts are indicative of the sensitivity towards public safety, public life and free flow of traffic by the concerned authorities. Under the provisions of

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the Bombay Police Act as well as under the permissions granted by the Respondents to the Applicants, it is specifically mentioned that they shall not cause obstruction to the free flow of the traffic. This condition is adhered only in breach. The photographs placed on record demonstrate the apathy of the vehicular traffic resulting from their continuous parking on the main roads and carriage ways for hours together. It is not only unreasonable but impermissible.

59. Reference can also be made to declaration of policy by the Department of Road Transport, Union of India as stated on 28th April 2008 that as per the extant policy of the Ministry, advertisement are not allowed on national highways within the right. However, some relaxation can be allowed in public interest in regard to hospitals, etc. It also said that the National Highway (Land and Traffic) Act, provides for removal of unauthorised encroachment which include removal of hoardings from right of way.

60. In *M.C. Mehta vs. Union of India and others*, (1997) 8 SCC

770, the subsequent judgment of the Supreme Court, it was clearly held that control and regulation of traffic is a matter of paramount public safety and therefore is evidently within the ambit of Article 21 of the Constitution of India. This pronouncement of the Court shows what extent of care and caution is expected of the State Government and the public authorities while granting such permission in exercise of their powers. It is not only obligatory but mandatory on the part of the State and its instrumentalities to ensure that the co-ordinate laws in force are not violated much less with impunity. These vehicles are stated to be clear obstruction to the free flow of traffic and the photographs on record show that they even are a source of nuisance on roads. Administrative action has to be in conformity with law and a decision based on misrepresentation of vital facts normally would vitiate the order in law and its scrutiny by the Court in exercise of its powers of judicial review would be permissible.

61. In the case of *A.L. Ranjane vs. Ravindra Ishwardas Sethna and others*, (2003) 1 SCC 379, the Court in a case where a tea stall

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for which the structure was put on the street and subsequently extended and it had permitted the structure from a 10 x 9 feet, the area was extended and the structure which was occupied on part of the land and where the workers of tea stall baked and washed utensils, the Supreme Court clearly stated that in view of the provisions of section 313 of the Bombay Municipal Corporation Act was a nuisance and the permission having been obtained by misrepresentation was vitiated. It is also a settled principle of law that where a hoarding is hazardous and is a disturbance to the safe traffic movement and adversely affect free and safe flow of traffic would be liable to be removed. Of course, unless these features exist, may be the exercise of power by the Corporation would be proper. (Reference may be made in the case of *Narayana Bhat vs. State of Tamil Nadu*, AIR 2001 SC 1736).

62. Violation of statutory Rules and provisions of the Motor Vehicles Act in manufacture/construction and equipping these 'mobile hoarding vehicles' render them liable not only for logistic chastism but

would also invite judicial intervention. Once these facts are brought to the notice of the Court, the Court cannot shut its eyes to flagrant violation of laws as well as improper exercise of powers by the authorities concerned. The authorities cannot in fact and in law absolve themselves of their liability to ensure adherence to the statutory provisions as well as maintaining larger public good in terms of public safety, environment and protection of heritage. The Corporation and the other authorities are all powerful, vested with some powers but even their collective authority or power is incapable of putting them above the law. Law is above you howsoever high you may be. The appropriate authorities in the Department of Registration, Police and the Corporation are expected to act in accordance with the above provisions. It was for them to ensure that no unspecified vehicle is permitted to come on the roads much less they are granted permission to park themselves for hours on the main roads resulting in obstruction to free flow of traffic. Apparently, it appears that they are hazardous to public safety, environment and are violating regulations and State policy in relation to protection of

heritage precincts. It is the mandate of law that it cannot be left to the choice of an individual as to how he wishes to construct and drive a vehicle. A person concerned cannot convert the chassis into a vehicle as per his whim and fancy to a vehicle which is not a notified vehicle. The law rightly is stringent in this regard and is expected to be obeyed by all concerned. The intent of the Legislature is very clear from all the above referred provisions at the stage of manufacture, equipping, design, etc.

63. The intent of the Legislature is very clear from all the above referred provisions relating to design, manufacture, construction, equipping the vehicle, its registration, certification and it being a road worthy vehicle. Once it comes on the road, it is expected to adhere to all traffic regulations and environmental laws. Merely because the Corporation is generating some revenue for itself and that the Applicants have spent considerable amounts in providing the vehicular infrastructure for advertising purpose, per se is no ground to diminish the value of adherence to law and public necessity. Larger

public interest must prevail over private interest and there are no equitable factors or circumstances which could tilt the balance in favour of the Applicants and the Corporation. We have no hesitation in observing that the Corporation and the Police authorities have failed to perform their statutory duties strictly in compliance to the mandate of Legislature. Justice Edith Jones said, "It is our view that our court owes the public a candid explanation of our respective positions". This principle is applicable to administrative decisions with greater command and rigour. It is expected of the authorities that they would act in consonance with the provisions of law and vigilantly. As which vehicles were produced before them, what vehicles have been registered and what vehicles are plying or standing on the busy roads of Mumbai, is a matter of great concern and all these authorities were expected to ponder and take proper decisions for good reasons and in larger public interest and environmental protection. The provisions of the statute stare the authorities in their face. Non adherence to such provisions show palpable errors in exercise of the powers vested in these authorities. We do express a

poise hope that the authorities would re-examine the matters in accordance with law and would correct the mistakes, if any, in accordance with law. The `mobile hoarding vehicles' have been constructed and equipped in violation to the statutory provisions. Even if the chassis were purchased by the Applicants from a company having manufacturing certificate or approval of the competent authority, in that event they could not have altered vehicles to `mobile hoarding vehicles' in face of the provisions of section 52 of the Motor Vehicles Act. We have already noticed that they have no permission from the Corporation to operate and park these motor mobile hoarding vehicles on the roads as the permission granted to them by the Corporation was for mobile vans, which these vehicles are certainly not. The parking places chosen by the authorities for these vehicles on the road and carriage ways are not parking spaces duly notified by the State in terms of section 117 of the Motor Vehicles Act. Neither the Police Department nor the Corporation are competent authorities in law to fix parking spaces temporarily or permanently. It was required of the State Government to apply its

mind and take a conscience decision in this regard, of course, in consultation with the authorities concerned as required under the provisions of the said section. The construction of these vehicles and their certification by the registering authorities are in violation of the statutory provisions. They have a height which is impermissible in law. They have dangerous projections and carry 12 to 14 flood lights which again are impermissible in law. On facts of the case, we are convinced that these 'mobile hoarding vehicles' are not only obstruction to the free flow of traffic but also infringe canons of public safety, heritage precincts, cause distraction and dangerous to the drivers of other vehicles in the fast moving traffic on the busy roads of Mumbai. The aspect of dangerous parking of these vehicles is of utmost importance. As is evident from the photographs on record, they can be dangerous to traffic particularly in night hours as they are parked on the edges of the main roads and carriage ways and can mislead drivers of other vehicles resulting into accidents. At the cost of repetition, we must notice that even the certificate of registration and other required forms under the Motor Vehicles Act and the Rules

framed thereunder have been obtained by the Applicants either by misrepresentation or in an improper way. It appears that authorities have not exercised their powers vigilantly and in accordance with law.

The authorities concerned are expected to grant such permissions upon proper application of mind and ensuring that larger public interest, public necessity and public environment is not undermined for private interest and little revenue that the authorities may earn. It is a salutary principle that normally revenue generation should not be at the cost of environmental, social and human rights. Rudiments of administrative governance certainly contemplate that the decisions of the competent authority should not offend the enacted laws. The doctrine of exclusive jurisdiction has no application and the Corporation is expected to exercise such powers with due respect to other co-ordinate laws. The Corporation and other authorities should have acted in complete coordination as most of the subjects fall in the area of common jurisdiction and due consultation is the panacea for proper exercise of such powers having serious impact on public life. Not only that principle of fairness is attracted in such cases but

equally correct legal approach is that such exercise of power is subject to restriction of law of the land and is not a power like freedom which is unchecked and uncontrolled from any point of view. All these factors persuade us to issue the following directions/orders :-

- (1) In view of the relevant statutory provisions, settled principles of law and for the reasons afore-recorded, we direct that 'the mobile hoarding vehicles shall not be parked on the main roads of Mumbai or even the carriage ways and would not obstruct free flow of traffic in any manner whatsoever at main roads and carriage ways of Mumbai'. Resultantly, we see no reason to vacate the interim orders dated 13th March 2008 and 3rd April 2008. On the contrary, the above orders are made absolute.

- (2) We direct the State Government and the

Corporation to make appropriate regulations in exercise of their respective statutory powers and in consultation with the appropriate bodies in relation to advertisement hoardings. It need to be examined by these authorities whether such mobile hoarding vehicles can at all be granted such permissions and/or licences in light of this judgment and the law in force.

- (3) We further direct the concerned Police authorities and the competent authorities in the Corporation and the registering authorities to take action against such vehicles, and after giving them proper opportunity, in accordance with law and in light of the provisions of the Motor Vehicles Act, 1988, particularly in relation to design, manufacturing, construction, equipping and alteration of vehicles and consequential impact thereupon upon

registration of such vehicles.

(4) We also issue further directions to the Chief Secretary of the State of Maharashtra to examine all these cases and fix responsibility in all the concerned Department and Public Authorities, if the officers are found to be erring. Further the State should, in consultation with other Authorities, including Municipal Corporation and Police, should frame proper policy in regard to various facets examined by the Court in this judgment.

(5) All concerned authorities shall ensure compliance of this order in spirit and substance.

(6) Notices of Motion Nos.155 of 2008, 156 of

2008 and 171 of 2008 are accordingly dismissed. In the circumstances, we do not propose to award any costs.

CHIEF JUSTICE

V.M. KANADE, J.

This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

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Publisher has only added the Page para for convenience in referencing.

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