

Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (C) NO. 223 OF 2009

M/s. Nova Ads ... Petitioner

Versus

Metropolitan Transport Corporation  
And Ors. ... Respondents

**WITH**

C.A. NO. 11037 OF 2014 (@ SLP(C) NO. 276/2007)  
C.A. NO. 11038 OF 2014 (@ SLP(C) NO. 852/2007)  
C.A. NO. 11039 OF 2014 (@ SLP(C) NO. 11880/2009)

JUDGMENT

**J U D G M E N T**

**Dipak Misra, J.**

Leave granted in all the special leave petitions.

2. The present batch of appeals characterizes series of collusive concessions, maladroit misrepresentations, designed negotiations and infusion of fraud on financial morality; and further epitomises

how statutory Corporations can cultivate the proclivity to give indecent burial to their interests, which is fundamentally collective interest that the Corporations are duty bound to protect, preserve and assert for. That apart, this bunch also exposes, as we have painfully penned, how the State, the protector of the interest of the citizens, has constantly maintained sphinx-like silence and also for some unfathomable reason, dexterously ignored the financial misdeeds as a colossal mute spectator. It seems all have either eloquently or silently competed with each other to write the epitaph of law. But, a pregnant one, there is a watch-dog, the petitioner in Writ Petition(C) No. 223/2009, despite being wedded to individual interest, thought it apposite to uncurtain the machinations adopted by the respondent nos. 3 to 8 and the Metropolitan Transport Corporation (Chennai) Ltd. (MTCL) which had filed SLP(C) No. 16908/2006 against K.S. Kumar Raja & Another and later on chose not to press the same. The painfully unusual thing, has been allowed to happen.

3. The litigation has a history. The MTCL issued advertisements for erection and maintenance of certain bus shelters, both lit and non-lit and in response to the said advertisement, M/s. Aim Associates approached the 1<sup>st</sup> respondent for taking of the work of

erection and maintenance of bus shelters on “build, operate and transfer” on sponsorship basis. It was based on the principle of first come, first serve. Specific areas had been allotted in favour of the respondents to the writ petition who have also preferred appeals by way of special leave. The agreement entered into by the MTCL with the sponsors was to remain valid for one year with the stipulation that the same shall be renewed every year for next nine years subject to the performance of the sponsors and compliance of all the terms and conditions of the agreement to the best satisfaction of the MTCL. Similar sponsorship agreements had been entered into with the other sponsors for construction and maintenance of bus shelters in the city of Chennai. In 2003, as various disputes arose pertaining to the sponsorship agreement, respondent nos. 3 to 8 to the writ petition, invoked the jurisdiction of the High Court under Article 226 of the Constitution. While the said writ petitions were pending, K.S. Kumar Raja, the 9<sup>th</sup> respondent to the writ petition, also preferred a writ petition before the High Court challenging the authority of the MTCL in allotting contract for erection and maintenance of bus shelters.

4. Dealing with all the writ petitions, the High Court passed a common order on 5.9.2006. Be it stated, along with the writ

petition, certain writ appeals were disposed of by the High Court. The High Court adverted to the facts in W.P.(C) No. 318/2004 which was filed by K.S. Kumar Raja, the sole proprietor, City Advertising Systems, Chennai who had questioned the tender notification dated 31.3.2003 published in Dina Bhoomi, a daily newspaper. By the said tender notification, MTCL had called for tenders from intending buyers for erection of bus shelters on the road margins within the city of Chennai. The said K.S. Kumar Raja had also preferred W.P. No. 34872/2003 calling in question the legal acceptability of the order dated 7.11.2003 of the Commissioner, Municipal Corporation of Chennai (for short, 'the Corporation') informing him that the erection and maintenance of bus shelters in Chennai city was being dealt with by the MTCL and, therefore, he should approach the said authority. It was contended before the High Court that it was obligation of the Corporation to provide bus shelters for the convenience of commuters. It was averred that initially various bus stops were identified and allotted on first come, first serve basis and consequently for the successful tenderer, permission was also granted to erect shelters under the royalty scheme. The writ petitioner had submitted an application to the respondent Corporation for allotment of specified location for establishment of

shelters but the same did not evoke any response. The reminders also fell on deaf ears. Being aggrieved by the said non-response, he had approached the High Court in W.P. No. 26890/2003 seeking a direction to the Corporation to consider his representation and the High Court had directed the Corporation to pass appropriate orders on the representation within a specific period. Pursuant to the order passed by the High Court, the Corporation on 7.11.2003 informed him that the construction and maintenance of a shelter in Chennai city was being dealt by the MTCL. At that juncture, MTCL invited tenders which constrained him to file the writ petition assailing the said order.

5. It was contended before the High Court that MTCL has no jurisdiction/authority to erect the bus shelters on its own or to give permission to the sponsors for erection as per the provisions contained in Section 285 of the Chennai City Municipal Corporation Act, 1919 (for brevity, 'the Act'). The Corporation filed its counter affidavit contending, inter alia, that the Government in G.O.Ms No. 14, Municipal Administration and Water Supply Department dated 11.1.1983 had allowed the MTCL to provide bus shelters to passengers and also to maintain them, and hence, it had the authority. Thus, the Corporation conceded to the authority of the

MTCL solely on the basis of the aforesaid notification issued by the Government. The High Court, addressed itself with regard to the competent authority under the Act who is entitled to build bus shelters for passengers or enter into an arrangement for the said purpose. Scanning the provisions of the Act and appreciating the administrative instructions, it came to hold that none of the provisions of the Act empowers the Government for issuing such notification; that reliance placed on the Government Order is unacceptable; that the road margin including the margin of public streets has to be controlled and managed by the Corporation as they vest in it; that MTCL has no jurisdiction to allow any sponsor either to erect or illuminate the bus shelters; that the order passed by the Commissioner requiring the petitioner therein to approach the MTCL was inapposite and deserved to be quashed; that the tender notification issued by the MTCL was legally unsustainable; and that the MTCL has no power either to grant or cancel the allotment. Being of this view, the High Court dismissed the writ petitions filed by the sponsors and allowed the writ petitions filed by K.S. Kumar Raja. It is seemly to state here that the High Court had issued certain directions, which we think it apt to reproduce:

“(i) The Commissioner, Corporation of Chennai shall identify the road margins for erection of bus shelters and

for the said purpose he can take the opinion/ advice of the Metropolitan Transport Corporation;

(ii) On such identification of the location for erection of bus shelters, the Commissioner Corporation of Chennai shall call for tenders from intending sponsors:

(iii) The Corporation Council is also entitled to resolve to allow Metropolitan Transport Corporation to locate bus shelters and maintain the same and in such an event, the Metropolitan Transport Corporation would identify the locations and erect bus shelters on the basis of the terms and conditions imposed by the Council.

(iv) The above exercise, viz., to identify the location and advertise on its own or empower the Metropolitan Transport Corporation to erect the bus shelters, shall be implemented by the Corporation, on or before the end of December 2006.

(v) Till such time, the petitioners viz., the sponsors are entitled to continue their activities in relation to the shelters established, subject to payment of Rs. 49,500/- per shelter for one module of 20 x 4 size shelters and a sum of Rs.99,000/- for the second module consists of 40 x 4 shelters.

(vi) The above said amount shall be paid to the Corporation of Chennai entirely in advance along with a copy of this order. On such payment, the Commissioner, Corporation of Chennai shall allow the petitioner to continue their business till the end of December 2006.

(vii) It is made clear that the above arrangement is basically made only in the interest of the commuters as they must be provided with the shelter and removal of the shelter will not be in the interest of either the writ petitioners or of the Metropolitan Transport Corporation or of the commuters in general. Hence, the Commissioner should strictly adhere to the timings prescribed in this order for taking the decision, whether to go for an advertisement on its own or leave the entire matter to the transport corporation the respective claims both by the sponsors as well as the transport corporation arising out of the Contract are left open to be resolved by

them before the appropriate forum”.

6. Challenging the said order, the aggrieved parties filed various special leave petitions and as has been stated earlier MTCL had also filed special leave petition. This Court had initially issued notice, and passed an interim order but thereafter during the pendency of special leave petitions the MTCL and the aggrieved contracting parties entered into a settlement. The settlement that was entered between the parties is necessitous to be reproduced:

“(1) That the parties would refer all the past disputes and their mutual claims to Arbitration in respect of the disputed period: 01.02.2003 to 31.03.2005. All payments made after 01.04.2005 will be adjusted as against the then current dues as claimed by the Petitioners.

(2) That the Petitioner in SLP (C) No. 276 and SLP (C) No. 852 of 2007 would be entitled to 500 shelters and they would be granted a 12 year license period with further extension, on condition that the entire 500 shelters, as per list, would be converted into International Standard Bus Shelters with Advertisement Space not exceeding 30 sq. mtrs per shelter, within 13 months time from the date of the order.

(3) The License Fee payable for this period would be Rs. 30,000/- per annum with an escalation of 10% once in every three years considering the huge investment involved in erecting the international Standard Bus Shelters. ”

7. On the basis of the said settlement a prayer was made for listing the matter and accordingly an order came to be passed on



30.06.2008, which is as follows:

“SLP (C) No. 276/07 and SLP (C) No. 852/07, filed by AIM Associate Ltd. and M/s Front Line Media Etc., respectively, are taken up on mentioning. Having regard to I.A. No. 3/08 filed in SLP (C) No. 276/07 and I.A. No. 2/08 in SLP(C) 852/07, wherein it has been mentioned that the matter has been settled between the parties, the terms whereof are filed in the form of Memo, annexed to the said applications, we disposed of both these Special Leave Petitions by the following order.

The Memos signed by the petitioner and the Respondent Metropolitan Transport Corporation duly supported by the affidavit of the petitioner and the affidavit of Shri Ramasubramaniam, Managing Director of Metropolitan Transport Corporation, filed in the connected SLP(C) No. 16908 of 2006, are taken on record and these Special Leave Petitions are disposed of in terms of the said memos.

The parties shall bear their own costs in these proceedings.

SLP (C) No. 16908/06 filed by the Metropolitan Transport Corporation, Chennai, Limited, is also taken up for consideration along with I.A. No.2/08 filed therein. In view of the Order passed hereinabove in the earlier two Special Leave Petitions, no orders are necessary in this Special Leave Petition. The Special Leave Petition is disposed of accordingly and the question of law raised in the petition is left open for decision in appropriate proceeding.”

8. Be it noted, to the said settlement, Chennai Municipal Corporation was not a party. It needs no Solomon’s wisdom that by such a settlement the interest of the Corporation was seriously affected, for the High Court had categorically opined that it was

within the authority of the Corporation to have control over the public roads as per the provisions contained in the Act.

9. At this juncture, it is condign to mention that during the pendency of the Special Leave Petitions, an agreement was entered into between the appellants and MTCL and as has been stated earlier, the Court has disposed of the matter on the basis of the settlement on 30.6.2008. At this stage, we think it apt to refer to the agreement that has been entered into between MTCL and M/s. Metro Multimedia, a firm controlled by M/s. Aim Associates, M/s. Front Line Media, M/s. Graphite Publicities, M/s. S.S. International, M/s. Vaishnavi Images and M/s. White Horse Communications Network dated 24.09.2008. The reference to the said agreements is extremely significant, for it throws immense light on the conduct of the parties. The relevant clauses from the said agreements are as follows:

“AND WHEREAS MTCL had permitted the firms for erection of various bus shelters by entering into individual agreements.

AND WHEREAS a dispute arose between the firms and MTCL, regarding the certain legal rights to continue with reference to issues pertaining to payment of Royalty amounts for the period of 2003 to 2005.

AND WHEREAS both the MTCL, and the firms duly agitated their respective rights before the Hon'ble Supreme Court of India, subsequent to the disposal of

legal proceedings by the Hon'ble High Court of Madras.

AND WHEREAS considering the overall issues all the parties herein had agreed for arriving at an appropriate settlement on such other terms and conditions and also agreed to resolve their past dispute once for all before the Hon'ble Supreme Court of India.

AND WHEREAS the Hon'ble Supreme Court of India had passed orders on 30<sup>th</sup> June 2008 in SLP(C) No. 16908/2006, 276/2007 and 852/2007 recording the terms as set out in the Memo and had permitted both MTCL, and the firms to implement the said order and had disposed all the cases pending before the Hon'ble Supreme Court of India.

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That in compliance with the orders of Hon'ble Supreme Court of India in SLP(C) No. 16908/2006, 276/2007 and 852/2007 MTCL agrees to allot 500 Nos. of bus shelters to the concessionaire for erection/re-erection of the shelters of International standard for the benefit of the waiting bus passengers and the concessionaire agrees to convert the existing bus shelters of International standard where there is no bus shelters. The concessionaire agrees to erect the above bus shelters of International standard at its own cost and in return agrees to pay the royalty amount at the rates hereinafter appearing.

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The concessionaire agrees to buy royalty amount to MTCL during the period of 12 years. The royalty amount shall be paid at the rate of Rs.30000/- per year per International Standard Bus Shelter with an escalation of 10% once in every three years over the previous rate. The period of agreements as well as the royalty payment starts from 01.09.2008.

XXXXX XXXXX XXXXX

This agreement is valid for 12 years from 01.09.2008 with further extension on condition that the entire 500 bus shelters, as per list, would be converted into International Standard Bus Shelters with advertisement space not exceeding 30 sq.mtrs per shelter, within 12 months from 01.09.2008.”

10. As the factual matrix undrape, M/s. Nova Ads, filed the Writ Petition(Civil) No. 223/2009 for recall of the order passed by this Court on many a ground. On 11.01.2011, the following order came to be passed:

“This writ petition has been filed for recall of the order passed by this Court on 30th June, 2008, in SLP(C)No.16908 of 2006, filed by the Metropolitan Transport Corporation against one K.S. Kumar Raja & Anr., together with two other Special Leave Petitions filed by some of the private parties, namely, AIM Associates Ltd. and M/s. Front Line Media etc.

2. By virtue of the said order, on a submission made by the parties that a settlement has been arrived at, we had disposed of the Special Leave Petitions on the basis of such submissions.

3. In this writ petition, it has been sought to be indicated that the said order had been passed despite an earlier order in the same matter.

4. Having heard learned counsel for the respective parties and in particular Mr. Mohan Parasaran, learned ASG, that the subject-matter of the Special Leave Petitions was confined to 500 bus shelters, out of which a number of shelters had already been constructed to a large extent, we recall the order which we had passed earlier on 30th June, 2008, and restore all the three Special Leave Petitions to file. We also, however, clarify

that such order had been passed upon agreement by the parties at that stage. We also clarify that whatever steps that have been taken so far on the basis of the said order, will be subject to the final result of the Special Leave Petitions.

5. This order is passed without prejudice to the rights and contentions of the parties at the time of the hearing of the Special Leave Petitions.

7. Liberty given to file additional documents.

11. Going back to the clauses in the agreement, it is luminescent that there is a reference to the order passed by the High Court and the order dated 30.6.2008 wherein this Court has recorded the settlement. The High Court had unequivocally held that the MTCL has no authority to enter into any agreement in respect of the bus shelters and only the Corporation has the authority under the law. The Chennai Corporation was not a party to the settlement. It is interesting to note that from the clauses incorporated in the agreement, it is reflective as if there was a direction by this Court to enter into this kind of settlement. The disturbing part is that the MTCL has entered into the agreement which has to remain valid for 12 years with the consortium of six firms without calling for tenders. These facts are not only bewildering, but really shocking.

12. In this background, the seminal question that is required to be addressed first is whether under the Act it is the Corporation or the

MTCL has the authority to deal with bus shelters for passengers. Mr. C.A. Sundaram, Mr. V. Giri and Mr. Ravindra Srivastava, learned senior counsel appearing for various parties in different appeals would contend that the High Court has fallen into error in its appreciation of the provisions of the Act and has erroneously come to hold that Corporation has the authority to exercise the powers for providing shelters to the passengers and to deal with the shelters for any commercial venture and the said transport undertakings are to be controlled and managed by the Corporation and the MTCL has no authority to grant permission for establishing the bus shelters or to deal with them in any manner. It is further urged by them that the High Court has failed to take note of the fact that at the time the State Government had conferred the power on MTCL to deal with the matter, the Corporation was under supersession and hence, the State Government had the authority to act on behalf of the Corporation and delegate the power/authority to MTCL and, therefore, there was no illegality in dealing with the same. Resisting the aforesaid contentions, it is submitted by Mr. Rohtagi, learned Attorney General that the analysis made by the High Court cannot be found fault with because it is in consonance with the principles of interpretation. Similar submission has also been

canvassed by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu and Mr. C.U. Singh, learned counsel for the writ petitioner. As far as the authority of the State Government is concerned, it is urged by them that by the time the notification was issued, the elected body had come into existence and, therefore, the State Government could not have acted on behalf of the Corporation.

13. To appreciate the controversy, certain statutory provisions need to be referred to. Sections 2(6) and 2(7) that define “carriage” and “cart” respectively read as follows:

**“Carriage** - “Carriage” means any wheeled vehicle with springs or other appliances acting as springs and includes any kind of bicycle, tricycle, rickshaw and palanquin but does not include any motor vehicle within the meaning of the [Motor Vehicles Act, 1939 (Central Act IV of 1939)].

**Cart** - “Cart” includes any wheeled vehicle which is not a carriage but does not include any motor vehicle within the meaning of the [Motor Vehicles Act, 1939 (Central Act IV of 1939)].”

14. Keeping the said definitions in view, we shall proceed to deal with certain other provisions of the Act. Chapter IX of the Act deals Public Streets. Section 203 reads as follows:

**“203. Vesting of public streets and their appurtenances in corporation** - (1) All public streets in the city not reserved under the control of [the Central

or the State Government], with the pavements, stones and other materials thereof, and all works, materials implements and other things provided for such streets, all drains, drainage works, tunnels and culverts whether made at the cost of the municipal fund or otherwise, in alongside or under any street, whether public or private, and all works, materials, implements and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof, shall vest in the corporation.

(2) The State Government may by notification withdraw any such street drain, drainage work, tunnel, culvert, or tree from the control of the corporation.”

15. From the aforesaid provisions, it is quite vivid that all public streets and their appurtenances which are not reserved under the control of the Central or State Government shall vest in the Corporation. Thus the reservation as engrafted under the provision is only meant for the Central Government or the State Government. Sub-section 2 of Section 203 enables the State Government to issue a notification withdrawing any street, drain, drainage, tunnel, culvert or tree from the control of the Corporation. It is submitted by Mr. Rohtagi that Section 203(1) of the Act, barring certain streets, vests everything in the Corporation. The State Government has been conferred the power by the legislature to withdraw certain streets and other things from the control of the Corporation, for the legislature in its wisdom has thought it appropriate to carve out an



exception from Section 203(1) and enabled the State to deal with it after issue of a notification. As we perceive the said provision, public streets which have been vested in the Corporation, unless it is reserved for the Central Government or the State Government or unless a notification is issued to withdraw in respect of certain streets and other things from the control of the Corporation, it has the absolute control. This is the plainest meaning that can be placed on the aforesaid provision, for it does not admit of any other interpretation.

16. Section 204 deals with maintenance and repair of streets. It reads as follows:

**“204. Maintenance and repair of streets** - The corporation shall cause the public streets to be maintained and repaired and make all improvements thereto which are necessary or expedient for the public safety or convenience.”

17. The aforesaid provision clearly envisages that it is the duty of the Corporation to maintain, repair and improve the streets which are necessary and expedient for public safety and convenience. The key words are “safety” and “convenience” and that is the responsibility of the Corporation.

18. Section 214 provides for protection of appurtenances and materials of streets. It lays down that it shall not be lawful for any

person, without the permission of the Commissioner, to displace, take up or make any alteration in the fence, posts, pavement, flags or other materials of any public street. The Commissioner, needless to say, is the Commissioner of the Corporation. Thus, it is clear that no alteration can take place without the permission of the Commissioner, for it is the duty of the Corporation to maintain the streets and also it is obliged to see the convenience of the public.

19. Section 214-A prescribes the power of the Corporation to recover expenses caused by extraordinary traffic. Section 220 deals with prohibition against obstruction in streets. The said provision stipulates that no one shall build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street or any public place the control of which is vested in the Corporation. Section 222 empowers the Commissioner to remove encroachments by following certain procedures. Section 223 deals with power to allow certain projections and erections. Section 223-A deals with the power of the Council to set up hoardings and levy fees. As the learned Attorney General has highlighted the said provision to bolster the proposition that it is the Corporation's authority to deal with bus shelters and the hoardings/ advertisements put on those shelters, it

is apposite to reproduce the same:

**“223-A. Power of Council to setup hoardings and levy fees** - Subject to the provisions of the Madras Open Places (Prevention of Disfigurement) Act, 1959 (II of 1959) and Section 129-A to 129-F of this Act, the commissioner may, with the sanction of the council, set up, for the exhibition of advertisements, hoardings, erections or other things in suitable place owned by, or vested in the corporation and may permit any person to use any such hoardings, erection or thing on payment of such fee as may be prescribed by regulations made by the council in this behalf.

**Explanation I.** - For the purpose of Section 129-D and 129-E the person who has been permitted to use any hoarding, erection or thing under this Section shall be in addition to the advertisements Taxes payable by him under Section 129-A or advertisements exhibited by him on such hoarding, executing or thing.

**Explanation II.** - For the removal of doubts, it is hereby declared that any fee payable by any person to use any hoarding, erection or thing under this Section shall be deemed to be the owner or the person in occupation of such hoarding, erection or thing.”

20. Laying emphasis upon the aforesaid quoted provision, it is urged by Mr. Rohtagi that exhibition of any advertisements, hoardings, erections or other things in a suitable place owned by, or vested in the Corporation has to be dealt with by the Council and the Commissioner can set up places with the sanction of the Council and the said act has to be done on payment of such fee as may be prescribed by the Regulations by the Council in that behalf. It is his

submission that the Corporation has been conferred the power by the legislature and it cannot be scuttled by any authority.

21. At this juncture, it is apt to refer to Section 285 of the Act. It deals with the provision of landing places, cart-stands, etc. It is as follows:-

**“285. Provisions of landing places, cart-stands, etc.** – (1) The Commissioner may construct or provide public landing places, halting places, cart-stand, cattle-shed and cow-house and may charge and levy such fees for the use of the same as the standing committee may fix.

**Explanation** – A cart stand shall, for the purpose of this Act, include a stand for carriages including motor vehicles within the meaning of the Motor Vehicles Act, 1939 and animals.

(2) A statement of the fees fixed by the standing committee for the use of such place, shall be put up in English and Tamil in a conspicuous part thereof.

(3) The commissioner may farm out the collection of such fees for any period not exceeding three years at a time, on such terms and conditions as he may think fit.”

22. This provision has its own significance. It empowers the Commissioner to construct or provide public landing places, halting places, cart-stand, cattle-shed and cow-house and for levy of fees for the use of the same, which is determined by the standing committee of the Corporation. The cart-stand, as the Explanation would show, for the purposes of the Act, includes stand for

carriages including motor vehicles within the meaning of Motor Vehicles Act, 1939 (for short, "the 1939 Act"). The definition of motor vehicle under the 1939 Act reads as follows:

"motor vehicle" 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 used solely upon the premises of the owner."

The aforesaid definition indubitably would include a bus. Keeping the same in view, we are to examine Section 285-A which has been emphasised by the learned counsel for the parties. The said provision reads as follows:-

**"285-A - Prohibition of use of public place or sides of public street as cart-stand etc.** - Where the commissioner has provided a public landing place, halting place, cart-stand, cattle-shed, or cow-house, he may prohibit the use for the same purpose by any person within such distance thereof as may be determined by the standing committee of any public place or the sides of any public street:

Provided that nothing contained in this section shall be deemed to authorise the commissioner to prohibit the use of any place in the city by the State Government as a stand solely for motor vehicles belonging to the Transport Department of the State Government.

23. Section 285-B deals with recovery of cart-stand fees, etc. On a scrutiny of the said provision, it is limpid that the Commissioner of

the Corporation has the power to take appropriate action for the purpose of recovery, if the fee leviable under sub-Section (1) of Section 285-B is not paid. Section 285-C deals with licence fee for private cart-stand. The provision also postulates that no person shall open a new cart-stand or keep open a private-cart stand unless he obtains from the Commissioner a licence to do so and the owner of a place is required to apply for licence. Section 285-C(5) provides for the licence fee and 285-C(6) provides the period of licence.

24. A conjoint reading of the aforesaid provisions make it absolutely plain that the Corporation has the power under the Act to control the cart-stand which includes a stand for carriages including motor-vehicles and levy fees and also provide for licence, even for private cart-stand.

25. Learned counsel for the appellants have laid immense emphasis on Section 203(2) and proviso to Section 285-A which we have already reproduced hereinbefore. Section 203(2) as has been stated earlier, empowers the State Government to issue a notification to withdraw any such street, drain, drainage work, tunnel, culvert, or tree from the control of the Corporation. A reference is made to the notification issued by the State

Government to pyramid the submission that the entire area where the bus shelters have been constructed, has been withdrawn from the control of the Government. We will advert to the same when we interpret the said notification at a later stage. Suffice it to say that Section 203(2) has to be understood as an exception to Section 203(1) and there has to be a specific notification, for the words used therein are "as such". They have their own signification.

26. Presently, we shall advert to the proviso to Section 285-A. Section 285-A has to be read in conjunction with Section 285. Section 285 empowers the Commissioner to construct or provide public landing places, halting places, cart-stand, etc. The Explanation includes a stand for carriages that includes motor vehicles within the definition of cart-stand. Section 285-A authorises the Commissioner to prohibit use of public place or sides of public street as cart-stand, etc. by any person within such distance which has to be determined by the standing committee. The proviso carries out an exception which stipulates that nothing contained in Section 285-A shall be deemed to authorise the Commissioner to prohibit the use of any place in the city by the State Government as a stand solely for motor vehicles belonging to the Transport Department of the State Government.

27. Learned counsel appearing for the appellants would contend that MTCL is a State undertaking and comes under the Transport Department. On a reading of the said proviso, it is graphically clear that the Commissioner's power cannot be extended to prohibit the use of any place in the city by the State Government as a stand solely for motor vehicles belonging to the Transport Department. It is urged by the learned counsel for the appellants that the vehicles in question belong to the State undertakings and thereby to the Transport Department and, therefore, the Commissioner has no role. On a first blush, the aforesaid submission looks slightly attractive, but on a studied scrutiny it has to pale into insignificance. We are inclined to think so as Section 285 uses the term "cart-stand" and by way of amendment, it has been specified that a cart-stand would be 'stand' for a carriage including motor vehicles within the meaning of 1939 Act. The proviso to Section 285-A also uses the phraseology "stand" solely for the "motor vehicles". The words in a statute have to be construed in their grammatical sense. Reasonableness or otherwise becomes material only when the statute is not clear. Long back, the Privy Council in Corporation of the **City of Victoria V. Bishop of Vancouver Island**<sup>1</sup> has laid down thus:

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<sup>1</sup> AIR 1921PC 240



“In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. In **Grey V. Pearson**<sup>2</sup>, Lord Wensleydale said:

“I have been long and deeply impressed with the wisdom of the rule, now I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency; but no farther.”

28. In this context, it is also apposite to refer to **K.P. Varghese V. Income Tax Officer, Ernakulam and Another**<sup>3</sup>, wherein the Court observed thus:

“..... The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be “drafted with divine prescience and perfect clarity”. We can do no better than repeat the famous words of Judge Learned Hand when he laid:

<sup>2</sup> (1957) 6 H.L.C. 61

<sup>3</sup> (1981) 4 SCC 173

“... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.”

29. We have referred to the aforesaid authorities only to highlight that the stand for motor vehicles in its grammatical connotation are quite explicit and conveys a definite meaning. It basically means making provisions for stands for motor vehicle. The word used in Section 285 is cart-stand. The explanation clearly states that the cart-stand, for the purposes of this Act, would include motor vehicles. The Corporation has been authorised by the Act to make provisions for cart-stands. When one thinks of stand for motor vehicles, it only means, the parking place. That is the popular meaning of the word. The “stand”, if one would like to conceive that it would include shelters for passengers, it will be a grossly unreasonable interpretation. It has to be given the common parlance meaning. While dealing with the concept of popular sense, a two-Judge Bench of this Court in ***The Commissioner of Sales Tax, Madhya Pradesh, Indore V. M/s. Jaswant Singh***

**Charan Singh**<sup>4</sup>, while dealing with the said facet has observed thus:

“This rule was stated as early as 1831 by Lord Tenterdan in *Attorney-General v. Winstanley* [1831] 2 D & Cl. 302. Similarly, in *Grenfell v. Inland Revenue Commissioner* [1876] 1 Ex-D. 242, Pollock, B., observed, "that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular sense', that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". But, "if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adopted to the fitness of the matter of the statute".

30. The scheme of the entire Act, as we notice, is to confer the power on the Corporation to have control over the public streets and to make provisions for public convenience. It is obligatory on the part of the Corporation to provide for stands. In addition, the Corporation or its authorised officer, Commissioner, cannot prohibit a stand meant for motor vehicles for the transport Corporation. The legislative intent is absolutely clear from the language used in various provisions of the Act. The purpose of interpretation is to

<sup>4</sup> AIR 1967 SC 1454

understand and gather the *mens* or *sententia legis* of the legislature as has been held in ***Grasim Industries Ltd. V. Collector of Customs, Bombay***<sup>5</sup>. In the aforesaid authority, it has been held thus:

“The elementary principle of interpreting any word while considering a statute is to gather the *mens* or *sententia legis* of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (*sic* altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in *Crawford v. Spooner*<sup>6</sup> “we cannot aid the legislature’s defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there”. In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests*<sup>7</sup>, *Union of India v. Deoki Nandan Aggarwal*<sup>8</sup>, *Institute of Chartered Accountants of India v. Price Waterhouse*<sup>9</sup> and *Harbhajan Singh v. Press Council of India*<sup>10</sup>.)”

<sup>5</sup> (2002) 4 SCC 297

<sup>6</sup> (1846) 6 Moore PC 1

<sup>7</sup> (1990) Supp SCC 785

<sup>8</sup> (1992) SCC (L&S) 248

<sup>9</sup> (1997) 6 SCC 312

<sup>10</sup> (2002) 3 SCC 722

31. If the provisions which we have referred to hereinabove are understood on the touchstone of aforesaid principles pertaining to statutory interpretation, there remains no iota of doubt that the legislature has conferred power on the Corporation to take necessary action for public convenience and make provisions for the cart-stand which includes the motor vehicles. The exception carved out by a proviso to Section 285-A of the Act does not remotely suggest that the legislature has even conceived of any other body like MTCL, which is a State undertaking, to even construct the bus shelters. What has been engrafted in the proviso to Section 285-A of the Act is that the Corporation or its agent cannot prohibit the use of any place in the city to be used for motor vehicles belonging to Transport Department of the State Government as a stand. We are of the considered opinion Section 285-A of the Act has to be read in juxtaposition with Section 285 of the Act and by no stretch of suggestion, it can be read to include bus shelters. The word "stand" has to be understood as per the common meaning given to it. That apart, the text, context and the pattern of use of words do suggest that it is meant for providing stand for the motor vehicles. In this regard, we may profitably refer to a passage from ***Utkal Contractors & Joinery Pvt. Ltd. and***

**others V. State of Orissa and others**<sup>11</sup>, which states as under:-

“No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important.”

32. Applying the aforesaid principle, when we scan the anatomy of the provisions, we are impelled to arrive at a singular conclusion that the Corporation has the authority to deal with cart-stand which includes the motor vehicles and the ‘stand’ as used in proviso to Section 285 of the Act only refers to the stand for motor vehicles and cannot include bus shelters.

33. At this juncture, we must take note of the submission, though feebly made, by the learned counsel for the appellants that the word ‘stand’ even if construed as a stand equivalent to cart-stand,

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<sup>11</sup> (1987) 3 SCC 279

would mean stand for motor vehicles only and not include bus shelters and, therefore, the Corporation would not have the authority but the State Government will have the power. The said submission has no legs to stand upon and hence, is hereby rejected. It is for the reason that the Corporation has to look after the convenience of the people as enshrined under Section 204 of the Act. The cumulative reading of the provisions and on proper understanding of the scheme of the Act, there remains no trace of a doubt that the Corporation has the authority to deal with the 'stands' and have the obligation to control and manage the bus shelters for public convenience. It is within the authority of the Corporation to think of appropriate management.

34. The main thrust of argument of the learned counsel for the appellants is that the State Government has given the charge and the responsibility to the MTCL to construct bus shelters and MTCL being empowered by the decision of the State Government has entered into an agreement with the appellants and, therefore, no fault can be found with such an action. For the said purpose, reliance has been placed on GOMs No. 14, Municipal Administration and Water Supply Department dated 11.01.1993 which had allowed the State transport undertaking to provide bus shelters to

passengers and also to maintain them. The said order as has been produced in the order of the High Court, reads as follows:-

“ORDER

The Expert Committee on Transport Sector constituted by the Government of Tamil Nadu in the G.O read above submitted its report.

2. The Recommendation No. 109 made by the Committee read as follows:-

109. Road maintaining Local Authorities should provide Bus Bay Spaces, Shelter for passengers to be provided by STUS as infrastructural facilities and they need to be maintained by STUs.

3. After careful consideration, the Government accept the recommendation and direct that wherever it is possible, the Municipal Corporations and Municipalities should provide bus bay spaces on the municipal roads. The State Transport Undertaking shall be allowed to provide shelters or passengers and also to maintain them.”

35. The aforesaid Government order refers to Recommendation No. 109 of the Committee. Be it stated, an Expert Committee was constituted and it had recommended that the road maintained by Local Authorities should provide Bus Bay Spaces, Shelter for passengers to be provided by STUs as Infrastructural facilities and they need to be maintained by STUs.

36. Learned counsel for the appellants would contend that the Government has authorised the said transport undertaking and this



has been done in exercise of power under the proviso to Section 285-A of the Act. We have already explained the ambit and scope of Section 285-A of the Act and proviso appended thereto. The proviso carves out an exception with regard to the stands to be used for motor vehicles owned by the State transport undertakings when the State so decides and the same cannot be prohibited by the Commissioner of the Corporation. The “stand” as has been discussed hereinbefore would only include “stand for motor vehicles”. The “stand” would not include shelters for passengers. The “stand” as has been stated earlier conveys the meaning of either a “parking place” or a “halting place” for the motor vehicle. In common parlance, the “stand” and “shelter for passengers” are quite different. They cannot be attributed the same meaning. The State Government could have issued a notification specifying certain places as stands for motor vehicles of the Transport Department which may include State transport undertakings i.e. MTCL, but the State Government, as we understand the scheme of the Act, has no statutory authority to issue a notification allowing the State transport undertakings to provide shelters for passengers. It is well settled in law that neither the Rule nor a Regulation nor a Notification can transgress the postulates engrafted under the Act.

In **General Officer Commanding-in-Chief V. Dr. Subhash Chandra Yadav**<sup>12</sup>, it has been held that:

“.....before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.”

37. In **B.K. Garad V. Nasik Merchants Co-op. Bank Ltd.**<sup>13</sup>, it has been ruled that if there is any conflict between a statute and the subordinate legislation, the statute shall prevail over the subordinate legislation and if the subordinate legislation is not in conformity with the statute, the same has to be ignored.

38. In **Additional District Magistrate (Rev.), Delhi Administration V. Shri Ram**<sup>14</sup>, it has been opined that it is a well recognized principle that conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

39. Tested on the anvil of the aforesaid authorities, it can be said with certitude that an order of the present nature could not have

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<sup>12</sup> (1988) 2 SCC 351

<sup>13</sup> (1984) 2 SCC 50

<sup>14</sup> (2000) 5 SCC 451

been issued by the State Government, for it is not in conformity with the Act and, in fact, travels beyond the statutory provisions.

40. In view of our foregoing analysis, the opinion expressed by the High Court that the Corporation has the power or authority to deal with the streets, subject to restrictions under the Act and the MTCL has no power or authority to deal with the same on the basis of the government order, which has been referred to hereinabove, is absolutely justified in law.

41. Presently, we have to dwell upon the equitable facet. Before we delve into the arena whether the appellants deserve any equity or not, we may profitably refer to certain authorities where the equity cannot operate. In ***Kedar Lal Seal and another V. Hari Lal Seal***<sup>15</sup>, while dealing with the concept of a solution on the basis of equities, Bose, J., speaking for the Bench stated thus:

“I am of the opinion that the second solution adumbrated earlier in this judgment, based on equities, must be ruled out at once. These matters have been dealt with by statute and we are now only concerned with statutory rights and cannot in the face of the statutory provisions have recourse to equitable principles however fair they may appear to be at first sight.”

42. In ***Raja Ram Mahadev Paranjpe & Others V. Aba Maruti Mali & Others***<sup>16</sup>, a three-Judge Bench has opined that

“equity does not operate to annul a statute. This

<sup>15</sup> AIR 1952 SC 47

<sup>16</sup> AIR 1962 SC 753

appears to us to be well established but we may refer to While and Tudor's Leading cases in Equity (9<sup>th</sup> ed. P. 238), where it is stated:

Although, in cases of contract between parties, equity will often relieve against penalties and forfeitures, where compensation can be granted, relief can never be given against the provisions of a statute."

43. In ***P.M. Latha and Anr. V. State of Kerala and Ors.***<sup>17</sup>, it has been opined:

"Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law....."

44. In ***Raghunath Raj Bareja and Anr. V. Punjab National Bank and Ors.***<sup>18</sup>, the Court observed that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail. The Court further ruled that equity can supplement the law, but it cannot supplant or override it. In this context, reliance was also placed upon ***Madamanchi Ramappa v. Muthaluru Bojjappa***<sup>19</sup>, ***Laxminarayan R. Bhattad v. State of Maharashtra***<sup>20</sup>, ***Nasiruddin v. Sita Ram Agarwal***<sup>21</sup>, ***E. Palanisamy v. Palanisamy***<sup>22</sup>, ***India House v. Kishan N.***

<sup>17</sup> (2003) 3 SCC 541

<sup>18</sup> (2007) 2 SCC 230

<sup>19</sup> AIR 1963 SC 1633

<sup>20</sup> (2003) 5 SCC 413

<sup>21</sup> (2003) 2 SCC 577

<sup>22</sup> (2003) 1 SCC 123

**Lalwani<sup>23</sup>.**

45. In the case at hand, as we have concluded that it is the Corporation who has the authority to deal with the bus shelters and not MTCL, the equity has to yield to law. It is submitted by the learned counsel for the appellants that they have spent huge amount in erecting the structures and also doing certain ancillary things in that regard and, therefore, appropriate extension should be granted. Such a prayer, needless to say, is in the realm of equity. It cannot be granted as that will violate the law. The contract between the MTCL and the appellants cannot bind the Corporation. Had there been an irregularity in the contract or any lapse, then the question of invoking the principle of equity could have arisen but as it is perceptible, it is an agreement between two parties in respect of an act, which one of the parties is not entitled to enter into as it has no legal authority.

46. That apart, while dealing with the issue of equity, we are obliged to deal with the conduct of the parties. The High Court had decided the writ petition in favour of the Corporation. The MTCL was very much aware that it has no authority to enter into any kind of contract for bus shelters as it was within the domain of the Corporation. This Court, at no point of time, had stayed the

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<sup>23</sup> (2003) 9 SCC 393

operation of the judgment passed by the High Court. The only order that was passed on 19.1.2007 was to the effect that until further orders, no action shall be taken in relation to bus shelters allotted to the petitioners subject to payment of all licence fee. Be it stated, an application was filed seeking clarification of the order dated 19.01.2007. On 10.3.2008, the Court passed the order that the applications for clarification and directions shall be considered along with the special leave petition. After the said order, the memo was filed, which has already been reproduced. What is disturbing is that the MTCL entered into a compromise/ settlement with the appellants and on the basis of the compromise entered into an agreement. In the agreement, as we notice, there is a reference to this Court's order describing that in pursuance of the order passed by this Court, the agreement was entered into. This Court had never passed any order/direction in that regard. The Court had disposed of the matter on the basis of the compromise. There was no decision by this Court. In such a situation, when the parties entered into an agreement and knowing fully well that the decision of the High Court was still staring at them, which cannot be countenanced.

47. The claim of equity has also to be adjudged on the bedrock of

truth. In ***Dalip Singh V. State of Uttar Pradesh and Others***<sup>24</sup>, the Court has observed thus:

“..... Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final”.

48. In ***Amar Singh V. Union of India and others***<sup>25</sup>, a two-Judge Bench has laid down:

“Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with “unclean hands” and are not entitled to be heard on the merits of their case.”

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<sup>24</sup> (2010) 2 SCC 114

<sup>25</sup> (2011) 7 SCC 69

In the said case, it is also stated that it is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings.

49. In the instant case, the appellants entered into a compromise/settlement with the MTCL. They were fully aware of the fact that as per the High Court judgment, MTCL did not have the authority. On the basis of the judgment of the High Court, such a settlement could not have been entered into. Despite the same, a settlement was entered and the cases were disposed of.

50. It is clear as a noon day that the MTCL, a wing of State Transport Department transgressed its powers, and we are inclined to think deliberately. In this context, a passage from **Westminster Corporation V. London & North Western Railway**<sup>26</sup>, as has been reproduced in **State of Bihar V. Kameshwar Singh**<sup>27</sup>, is apposite to quote:

“It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.”

51. We have referred to the aforesaid authorities for the

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<sup>26</sup> (1905) AC 426

<sup>27</sup> AIR 1952 SC 252



proposition that the MTCL, which is an undertaking of State Transport Department that has been granted some benefit under the Act, knowing fully well that it has no authority to enter into a settlement, has entered into an agreement in respect of bus shelters after the judgment of the High Court of Madras, consciously it proceeded to do so and, in fact, did enter into an agreement. It would have been appropriate on its part from all spectrums to remain within its bounds. It failed to do so. When a power had not been conferred on MTCL to do so and it exercises that power under the cloak of a power conferred, it really paved the path of deviance. The appellants could not have legitimately entered into a settlement with the MTCL. It could not have entered into an agreement with the State undertaking. This was a clear deceit on the part of the appellants in collusion with the MTCL to frustrate the legal rights of the Corporation. It is a deception intended to get an advantage. It is another matter that the Corporation did not wake up to save its own interest. The writ petitioner, for his own individual interest, made a prayer to recall of the order and thereafter, as we find, the Corporation has woken from slumber. Be that as it may, it was a loss to the Corporation and the Corporation is a public body and it is expected to protect and handle its finances

for the benefit of the persons who are covered under the Act. The conduct of the appellants, from any angle, is absolutely depreciable.

52. Another aspect to be taken note of. The agreement has been entered into by the appellants with the MTCL for a period of 12 years. Despite the direction of the High Court that the Commissioner of Corporation of Chennai shall call for tenders from intending sponsors. True it is, the High Court has passed certain orders relating to interim arrangement but that was solely for the purpose of protecting the interest of the commuters. A public authority like the Corporation is not supposed to enter into this kind of private negotiations without calling for a tender, especially while entering into a contract for the purpose of providing bus shelters. It is well settled in law that wherever a contract is to be awarded or a licence is sought to be given, it is obligatory on the part of the public authority to adopt a transparent and fair method. It serves two purposes, namely, participation of all eligible competitors and giving a fair opportunity to them and also generating maximum revenue. In this context, we may profitably refer to a two-Judge Bench in ***Nagar Nigam, Meerut V. Al Faheem Meat Exports (P) Ltd. & Others***<sup>28</sup>, wherein it has been held as follows:

“The law is well settled that contracts by the State, its

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<sup>28</sup> (2006) 13 SCC 382

corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution.....”

53. Needless to say, there can be a situation for good reasons a contract may be granted by private negotiation but that has to be in a very exceptional circumstance, for in the absence of transparency the public confidence is not only shaken but shattered. In the case at hand, as the contract has been entered by way of some kind of understanding reason of which is quite unfathomable, such a contract has to be treated as vitiated, applying this principle also.

54. From the aforesaid analysis, it is luculent that there was a deceit practiced by the appellants in collusion with MTCL and the authorities of the MTCL had acted with full knowledge against the statute and against the interest of the Corporation. The beneficiaries are the appellants. As far as the MTCL functionaries

are concerned, we do not intend to say anything as we have been apprised by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that certain proceedings are pending against the functionaries of the MTCL. We will be failing in our duty if we do not take note of the fact that the Corporation should have been vigilant to protect its own interests. However, as is perceived, it did not wake up for long. The State remained a silent spectator to all that was going on. Under these circumstances, prayer has been made on behalf of the appellants to show equity and allow them to continue at least for two years. Needless to emphasise, it has been canvassed as an alternative submission. The said alternative submission does not deserve consideration. To think of acceptance of such a submission, we will be adding a premium to the appellants who have crucified the law and played possum of the existence of the judgment of the High Court and in the ultimate eventuate designed the plan to have the benefit of 12 years; 'a yuga' for availing illegal benefit', which is impermissible and belongs to the Corporation and required to be dealt with in accordance with law. The whole action, as we perceive, is a fiscal pollution. It is, if we allow ourselves to say so, an acid rain on finance that can really crumble and collapse the financial health of the Corporation, which,

in a democracy, is impermissible. It compels us to say that the skillfully designed scheme has the potentiality to bring in ruination in an orderly society governed by law; as if the appellants are determined to treat the proceeding in a court equivalent to experimentation in a laboratory or an adventure in a garden that has no boundary.

55. In view of the aforesaid analysis, the contracts entered into by the appellants with the MTCL cannot be sustained and they are accordingly annulled. It is directed that the Corporation shall take over the management of the bus shelters forthwith and shall proceed to deal with them for all purposes by taking recourse to procedure of tender or auction which should be fair and transparent. This direction of ours shall prevail all other directions issued by the High Court.

56. At this juncture, we may note that a submission was canvassed by the appellants that they have spent huge amount of money in putting the structures and making certain arrangements. As we have annulled the contract and their conduct is decryable, the said facet of spending, whatever may be the extent, is absolutely irrelevant and we so hold.

57. Consequently, the civil appeals arising out of SLP(C) Nos. 276

of 2007 and 852 of 2007 are dismissed and the appellants, namely, M/s. White Horse Communication, M/s. Aim Associates Ltd., M/s. S.S. International, M/s. Front Line Media, M/s. Graphite Publicities and M/s. Vaishnavi Images shall pay a cost of Rs.5 lakhs each to the Corporation within a period of eight weeks from today. The writ petition and appeal preferred by Mr. A.T. Mani are disposed of in terms of our order and the order of the High Court is affirmed to the extent it holds that the Corporation has the authority. As far as other directions are concerned, they are given for a specified period and hence, have lost their force and utility. As far as the order directing calling for tender, we have modified the same direction as per our direction and the Corporation shall follow the directions which are stated hereinabove. We expect the Corporation to act in quite promptitude and become more vigilant, for it protects the collective interest.

.....J.  
[DIPAK MISRA]

.....J.  
[UDAY UMESH LALIT]

NEW DELHI

DECEMBER 12, 2014.

SUPREME COURT OF INDIA



JUDGMENT

ITEM NO.1A  
(For judgment)

COURT NO.6

SECTION PIL

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 223/2009

M/S NOVA ADS

Petitioner(s)

VERSUS

METROPOLITAN TANSF.CORP.& ORS.

Respondent(s)

WITH

SLP(C) No. 276/2007

SLP(C) No. 852/2007

SLP(C) No. 11880/2009

Date : 12/12/2014 These petitions were called on for pronouncement of judgment today.

For Petitioner(s)  
WP(C) 233/09 Mr. C.U. Singh, Sr. Adv.  
Mr. B. Raghenth Basant, Adv.  
Ms. Liz Mathew, Adv.  
Ms. Shruti Iyer, Adv.

SLP(C) 276/07 Mr. V. Giri, Sr. Adv.  
Mr. Nikhil Nayyar, Adv.  
Mr. Ambuj Agrawal, Adv.  
Mr. Dhananjay Baijal, Adv.  
Ms. Akanksha, Adv.  
Mr. K.S. Natarajan, Adv.

SLP(C) 852/07 Mr. Ravindra Srivastava, Sr. Adv.  
Mr. K.S. Natarajan, Adv.  
Mr. Nikhil Nayyar, AOR  
Mr. Dhananjay Baijal, Adv.  
Ms. Akanksha, Adv.

SLP(C)11880/07 Mr. V. Ramasubramanian, AOR  
Ms. Shruti Iyer, Adv.

For Respondent(s)  
No.2 in SLP 276/07 Mr. Mukul Rohatgi, A.G.  
(Corpn. Of Mr. Jayanth Muth Raj, Adv.  
Chennai) Mrs. Malavika J., Adv.  
Mr. Sureshan P., AOR

For R-3 to 8  
in WP(C) 223/09 Mr. C.A. Sundaram, Sr. Adv.  
Mr. K.S. Natarajan, Adv.  
Mr. Nikhil Nayyar, AOR



Mr. Dhananjay Baijal, Adv.  
Ms. Akanksha, Adv.

Mr. Subramonium Prasad, Adv.  
Mr. B. Balaji, AOR  
Mr. R. Rakesh Sharma, Adv.  
Ms. R. Shase, Adv.  
Mr. Paramveer, Adv.  
Mr. Rajiv Dalal, Adv.

Mr. S. Thananjayan, Adv.

Mr. T. Harish Kumar, Adv.

Mr. V. N. Raghupathy, Adv.

Hon'ble Mr. Justice Dipak Misra pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Uday Umesh Lalit.

Leave granted in all the special leave petitions.

The civil appeals arising out of SLP(C) Nos. 276 of 2007 and 852 of 2007 are dismissed. The writ petition and appeal preferred by Mr. A.T. Mani are disposed of in terms of the signed reportable judgment.

(R.NATARAJAN)  
Court Master

(H.S. PARASHER)  
Court Master

(Signed reportable judgment is placed on the file)