

ITEM NO.53

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.6890/2017

(Arising out of impugned final judgment and order dated 27/10/2016
in WP No. 2006/2008 passed by the High Court of Bombay)

INDIAN BROADCASTING FOUNDATION

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA AND ORS

Respondent(s)

(With interim relief and office report)

WITH S.L.P. (C) No.6855/2017

(With interim relief and office report)

Date : 27/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Mr. Arvind P. Datar, Sr. Adv.
Ms. Aparajita Singh, Adv.
Mr. Rahul Pratap, AOR
Mr. Karan Lahiri, Adv.

SLP(C) 6855/17 Mr. P. Chidambaram, Sr. Adv.
Mr. Kapil Arora, Adv.
Mr. Karan Khanna, Adv.
Mr. Madhav Khosla, Adv.
for M/s. Cyril Amarchand Mangaldas

For Respondent(s) Mr. K.K. Venugopal, Sr. Adv.
Mr. Nishant Ramakantrao Katneshwarkar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Arvind P. Datar, learned senior counsel
for the petitioner, Indian Broadcasting Foundation and

Mr. K.K. Venugopal, learned senior counsel for the State of Maharashtra.

It is submitted by Mr. Datar, learned senior counsel that the State of Maharashtra could not have levied stamp duty on the execution of the document pertaining to advertisement, for what it cannot do directly, cannot be permitted to do indirectly in law. To elaborate, the State Legislature cannot impose tax on anything shown on electronic and print media, that is to say, on the television, radio and newspaper. Learned senior counsel would submit that the levy of stamp duty is a colorable piece of legislation and it will not be saved by the doctrine of 'pith and substance' or by 'aspect doctrine'. It is further submitted by Mr. Datar that the expression "through an electronic and print media" has to be given appropriate and adequate emphasis so that the freedom of speech and expression is sustained in a democratic body polity and no attempt should be made to scuttle their progress and smother their effective sustenance. Additionally, it is canvassed by him that if a huge revenue is taken away from the members of the Broadcasting Foundation, who are embedded to the cause of freedom of speech and expression that percolates the ethos pertaining to individual and collective expression, inevitably hamper the freedom of speech and expression. That is not constitutionally permissible.

Mr. K.K. Venugopal, learned senior counsel appearing for the State of Maharashtra would contend in his turn that the subject of levy of stamp duty comes within Lists II and III of the Constitution and the State Legislature has the authority to legislate and, therefore, the judgment rendered by the High Court is absolutely flawless. Learned senior counsel further submits that the argument that it affects the freedom of press and freedom of speech and expression as

enshrined under Article 19(1)(a) of the Constitution of India, is mercurial proponent because levy of stamp duty has nothing to do with the concepts that have been highlighted by the learned counsel for the petitioner-Foundation. It is also urged by him that a State Legislature can legislate touching the aspects of stamp duty for the purpose of revenue generation and it cannot be called a colorable exercise of power. Additionally, it is contended by him that duty is to be paid by the advertising agency or persons and, thereby, neither the electronic media nor the print media is affected.

Having noted the submissions, we are of the considered opinion that the matter requires to be debated, especially keeping in view the sacrosanctity of the freedom of speech and expression and the involvement of electronic and print media and, therefore, we direct that there shall be stay of the operation of the judgment of the High Court, subject to the member of the petitioner-Foundation keeping accounts with itself and giving at least samples of ten agreements to the respondent-State so that eventually at the time of final adjudication appropriate relief can be moulded. That apart, each of the members of the Foundation shall give a summary of the revenue earned through the advertisement.

Let the matter be listed for final disposal on 13th September, 2017.

Pleadings shall be completed in the meantime.

(Chetan Kumar)
Court Master

(Shakti Parkash)
Court Master