

(2005) 09 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No's. 19941, 19942, 21148 and 31634 of 2000, 30262 and 38810 of 2001, 37167 of 2002 and 1063 of 2003

Century Club

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 265, 301, 304 (b)
Karnataka Tax on Luxuries Act, 1979 — Section 10 (2), 2 (4), 3

Citation : (2007) 5 VST 292

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : R.V. Prasad, for Vasani Associates, S. Narayana and Kamath and Kamath, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—D.V. Shylendra Kumar J.—The Karnataka Tax on Luxuries Act, 1979 (for short, "the Act") is an enactment by the Karnataka State Legislature to augment the revenue to the State of Karnataka, like any other taxing statutes is the subject-matter of several amendments as also challenges before the courts including the validity of the parent Act and the amendments.

2. In the present instance, it is this Act, as amended by the Karnataka Act No. 5 of 2000, which is brought for scrutiny before this Court in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India for judicial review of the legislative action. The petitioners had also sought for issue of a writ in the nature of certiorari, to quash the assessment orders that had been passed in respect of the petitioners for the years 1995-96 to 1998-99 and 2000-01 by applying the law as had been amended under the Karnataka Act No. 5 of 2000.

3. This Court in terms of the order dated January 13, 2003, while issuing rule, restricted the scrutiny in these writ petitions only to the validity of the legislative

action and relegated the petitioners to pursue their statutory remedies under the Act in respect of the assessment orders.

4. The Petitioners are registered bodies registered under the provisions of the Karnataka Societies Registration Act, 1904. It is the claim of the petitioners that the clubs are meant for private recreation and involving the members in the social activities. It is also averred that the petitioners in the course of such activities do provide facilities like food and drinks, leisure activities such as games, etc., that they have affiliation with similar clubs within and outside the State and the country on reciprocal basis; that the clubs also have provided for accommodation which will be provided on payment to members of clubs who have reciprocal arrangement with the petitioner-clubs and who venture to stay in such accommodation during their visits to the city. It is claimed that such accommodation is not provided to members of the public nor to any person who is a member of the another club which does not have reciprocal arrangement with the petitioner-club.

5. The subject-matter of dispute is the levy, which is known as luxury tax under the provisions of the Act, on such charges collected from persons who make use of the accommodation, at the rate stipulated under the Act, in terms of the charging section-Section 3 which reads thus:

3. Levy and collection of tax on luxury provided in a hotel.- (1) Subject to the provisions of this Act, there shall be levied and collected a tax on the luxury provided in a hotel in respect of every room (to be known as "luxury tax") at the following rates, namely:

----- (a) Where the charges for lodging per room per day are Five per cent of not less than one hundred and fifty rupees but less such charges than two hundred rupees (b) Where the charges for lodging per room per day are Ten per cent of not less than two hundred rupees but less than four such charges hundred rupees. (c) Where the charges for lodging per room per day are Twelve per cent not less than four hundred rupees. of such charges (d) ...

Provided that where charges for lodging are payable otherwise than on daily basis, then, for the purpose of determining the tax liability under this section, the charges shall be computed as for a day, based on the period of lodging for which the charges are payable : Provided further that where any charges for lodging are paid by any person who is a member of the Foreign Diplomatic Mission in India, then such person shall be exempt from the payment of tax:

(1-A) Tax levied under Sub-section (1.) shall be paid by every proprietor;

(1-B) Notwithstanding anything contained in Sub-section (1), no tax shall be levied and collected from a hotelier to the extent of tax not collected by him during the period from the first day of August, 1985 to the 31st day of March,

1986.

(2) ...

(3) In computing the amount of tax payable under this section, the amount shall, if it is a multiple of five paise be increased to the next higher multiple of five paise.

3-A ...

3-B. Tax on luxuries like health club, etc.-There shall be levied and collected a tax at the rate of twenty per cent on the charges collected for luxuries provided in a hotel for residents or others such as health club, beauty parlour, swimming pool, conference hall and the like when such charges are collected separately.

3-C...

6. While the Revenue wants to rope in the petitioner-clubs within the net of tax in terms of Section 3 of the Act and that insofar as it related to organisations like the clubs, it had failed earlier in one such effort in view of the decision of this Court in the case of Bangalore Golf Club v. Assistant Commissioner of Luxury Taxes [1999] 115 STC 338 AP. The Revenue undaunted by it has renewed its efforts through the supportive law in terms of the provisions of the Act as amended by the Karnataka Act No. 5 of 2000, whereby the liability in respect of the institutions like the petitioners is sought to be made good with retrospective effect, so that the failure on their part in terms of the order of this Court in the case of Bangalore Golf Club [1999] 115 STC 338 AP, is got over.

7. Quite naturally, persons like the petitioners again have knocked at the doors of this Court by impugning the constitutional validity of the amended provisions in so far as it comprehensively seeks to rope in the petitioners within the net of taxation without any choice in this regard.

8. Though under the charging section the levy is on the charges collected towards the letting out of rooms in a building, which is a hotel, i.e., levy is in respect of charges for letting out accommodation in a hotel, organisations like the petitioners are also included as the very definition of "hotel" in terms of Section 2(4) of the Act ropes within it, lodging house, club and health resorts. Institutions like clubs have been so mentioned in the definition clause defining the term "hotel" by way of addition in terms of the amending Act 5 of 2000 and clubs being made a hotel and further to rub salt into the wounds, a further Explanation has been added to the definition, also by the very amending Act roping in a club within the net of tax irrespective of the fact that such accommodation is provided in a club whether or not, by way of business, whereas in the definition clause itself, for the term "hotel", which though is inclusive of a club, it is only such building where lodging accommodation is provided for a monetary consideration by way of letting in the course of business; that activity begets the name of the hotel to the building or lodging accommodation in question.

9. Petitioners are mainly aggrieved with the result brought about by the amending Act 5 of 2000, making changes to the definition of the term "hotel" and foisting a liability for payment of luxury tax on institutions like the petitioners. The definition clause in respect of the hotel in terms of Section 2(4), after it was amended by the Act 5 of 2000 reads as under:

2. Definitions.-

(4) "Hotel" means a building or part of a building where lodging accommodation, with or without board is by way of business provided for a monetary consideration, and includes a lodging house, club and holiday resorts.

Explanation.-A club, a lodging house and a holiday resort for which charges are collected for providing accommodation whether or not in the course of business shall be deemed to be a hotel for the purpose of this Act.

10. The prayer in these writ petitions is to declare and strike down the amendment made to Section 2(4) of the Act and the Explanation appended thereto in terms of the Karnataka Act 5 of 2000, as constitutionally void and unenforceable, being a colourable piece of legislation, encroaching upon the judicial powers of the High Court and violative of Articles 14, 19, 265, 301 and 304(b) of the Constitution of India. Petitioners though have also sought for such relief having larger repercussion, appear to be content even if this Court were to hold and declare that the Explanation appended to the definition clause "hotel" is to be declared as bad, being ultra vires Section 2(4), etc., as prayed in para 14 of the writ petition (W.P. No. 1063 of 2003), which reads as under:

This honourable High Court may be pleased to declare and strike down the Explanation which has been appended to Section 2(4) of the Karnataka Tax on Luxuries Act, 1979, which was introduced by Karnataka Act No. 5 of 2000 as being ultra vires Section 2(4) of the Act.

11. If the amending Act 5 of 2000 as it amends the definition of "hotel" in Section 2(4) is to be declared as unconstitutional, the result will be that exclusive definition will be taken away in which event, as the law as it stood prior to this amendment had come in for interpretation before this Court in the case of Bangalore Golf Club [1999] 115 STC 338 AP, and as this Court had invalidated the levy under the Act in respect of the institutions like petitioner-clubs, petitioner will automatically get out of the net of taxation.

12. On the other hand, if the Explanation alone is found to be bad, objectionable, unenforceable, etc., then a club to be called as a hotel remains on par with any other building where lodging accommodation is provided for monetary considerations by way of business and not otherwise. That means, if the activity of providing lodging accommodation in a part of its building for monetary consideration is not by way of business, the club does not become a hotel and consequently is outside the scope of the charging Section 3. To achieve this object, the petitioners have urged several grounds.

13. On the writ petitions being admitted, the respondents were put on notice and there being many similar petitions also, the respondents have filed their counter in one writ petition, viz., W.P. No. 38810 of 2001 and Sri T.K. Vedamurthy, learned Government Pleader appearing for the respondents submits that the same holds good in respect of other writ petitions also, as the contentions are common.

14. Writ petitions are opposed. The State seeks to sustain the validity of the provisions made.

15. I have heard Sri R.V. Prasad, who has led the arguments on behalf of the petitioners and Sri T.K. Vedamurthy, learned Government Pleader, appearing for the respondents.

16. Several grounds are urged in the petitions and several contentions are raised. It is firstly contended that the amending Act is bad for the reason that it seeks to give a highly artificial definition of the word "hotel", particularly in relation to institutions like the petitioners, which are mutual clubs who neither carry on any activity in the nature of business nor attempt to make profit out of the activity; that the activity is very restricted one and the services confined to an identified group of persons and therefore roping in an organisation like the petitioner within the meaning of "hotel" is bad. It is alternatively contended that the Explanation added by the very amending Act to the definition of "hotel" is one which is virtually at cross-purposes from what is provided for in the main part of the definition clause; that it is never the function of the Explanation to give a different meaning to definition clause, which can never be visualised within the meaning of the main part of the word as it occurs in the definition clause itself; that what is not actually a hotel in terms of the main definition clause is nevertheless sought to be made a "hotel" only through the Explanation, which is never the object of having/adding an Explanation; that in the guise of adding the Explanation something new is added; that apart from this incongruity, the Explanation also seeks to bring about a class legislation amounting to invidious discrimination and therefore the Explanation should necessarily be severed even if the main definition clause, in terms of the amending Act 5 of 2000 is one which is sustainable.

17. Yet another contention urged on behalf of the petitioners is that the amendment though effected to the definition clause, yet it is given retrospective effect; that it virtually amounts to levy of tax on the institutions like the petitioners from an earlier date, even when the charging section did not provide for it; that if the charging section is not in any way altered or has been enlarged to rope in the institutions like petitioners within the scope of the charging section, by tinkering with the definition clause, such object cannot be achieved; that the nature of the levy being indirect tax, the petitioners had every right to pass on the tax liability to the consumer of the luxury, but by creating a charge with retrospective effect, the petitioners have been deprived of such opportunity and the levy becomes one direct on the petitioners themselves and therefore the

same is beyond the competency of the State Legislature. It is in this regard, the learned Counsel for the petitioners urged that it is also violative of Article 19(1) (g) of the Constitution of India.

18. Sri Prasad, learned Counsel for the petitioners, has also urged that the Explanation as added by the amending Act also becomes bad for yet another reason, namely, that it brings about a classification discriminating persons like the petitioner-clubs vis-a-vis other persons, organisations wherein also accommodation is let out on rent; that while in the case of other institutions and organisations who have their building let out for use such rent is sought to be subjected to tax under the Act only in the event of the activity of providing accommodation is in the course of business, in so far as persons like the petitioner-clubs are concerned, taxes are levied on the activity of letting out any part of the building belonging to the club irrespective of whether the letting out is in the course of business or otherwise; that the Explanation brings about such discrimination and therefore should be declared to be unconstitutional.

19. Learned Counsel for the petitioners has placed reliance on the following decisions in support of his submissions:

1. S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, .
2. M.P. Cement Manufacturers" Association Vs. State of Madhya Pradesh and Others, .
3. Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, .
4. British Physical Lab India Ltd. Vs. State of Karnataka and Another, .
5. ITC Ltd., Kolkata v. State of Karnataka [2005] 4 KLJ 359.
6. Shamanur Kallappa and Sons v. State of Karnataka [2004] 136 STC 132 (Kar).

20. On behalf of the respondent-State, while elaborate statement of objections is filed, what is sought to be urged essentially is that the activity of providing accommodation for lodging in a hotel and on the value of rent collected for providing such accommodation with facilities such as air-condition, telephone, etc., tax was sought to be imposed on such buildings where such activity was being carried on though was not known as a hotel; that the definition of "hotel" even earlier could have usually roped in the club if it so fulfilled the requirements, but as in the case of Bangalore Golf Club v. Assistant Commissioner of Luxury Taxes [1999] 115 STC 338 AP, this Court had held that the petitioner therein was not carrying on business in the activity of letting out accommodation and therefore was not liable to pay luxury tax, the Legislature wanted to amend the law so as to rope in such activity carried on by clubs also within the net of taxation under the Act; that for such purpose, the definition clause defining "hotel" was enlarged indicating that the word "hotel" includes a club also and the "Explanation" to this definition was added to ensure that in the case of a club, lodging house and holiday resorts, there was no need for further

examination of the question as to whether the activity of letting out accommodation is in the course of business or not and when the amendment is for such express purpose and it has actually achieved the purpose, the Legislature being competent to bring about such amendment, there is no occasion to declare the provision, particularly, as amended by Act 5 of 2000 as unconstitutional and therefore has prayed for dismissal of the writ petition.

21. It is also urged in the statement of objections that the activity being either a sort of business or being an activity with profit-motive is not a criteria for levy of tax under the Act and if in respect of some class of organisations carrying on such activity attracting tax being part of business is done away, it cannot be said that the provision is either beyond the competence of the Legislature nor can it be held to be unconstitutional.

22. It is also urged that the activities of a club are not any different from that of a hotel in so far as it relates to the letting out of accommodation is concerned for rent and the letting out of accommodation for rent by a hotel being always in the course of its business and institutions and organisations like the petitioners, i.e., in respect of clubs, the activity being subjected to levy of tax on the rent at the rates stipulated irrespective of as to whether the activity is carried on in the course of business or not, that by itself would not make much difference as even otherwise the club being akin to a hotel, the activity is always in the course of business and therefore one attracting tax under the Act.

23. What is urged is that there is not much difference between a club and a hotel in so far as activity of collecting rent from its customers to make use of the accommodation provided in the building of either the club or a hotel on rental basis is concerned and therefore a provision which defines a club as a hotel irrespective of whether the activity is in the course of business or otherwise does not by itself bring about much change or contribute independently as even otherwise the activity even in the case of club is like that in a hotel.

24. Sri Vedamurthy, learned Government Pleader appearing on behalf of the respondents and defending the provisions very stoutly, submits that the levy and collection of tax on the luxury provided in a hotel was the subject-matter of challenge before the Supreme Court and the validity of such provisions including the validity of Section 3, the charging section of the present Act, has already been upheld by the Supreme Court in the case of *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, , that the amendment to the definition clause "hotel" adding the Explanation is illustrative of the attempt and answer to the problem faced for collecting luxury tax from organisations like clubs in the light of the decision of this Court in the case of *Bangalore Golf Club v. Assistant Commissioner of Luxury Taxes* [1999] 115 STC 338 SC; that the amendment was a legislative measure to get over the stumbling block the Revenue faced, in subjecting to tax the organisations like the petitioners; that the explanatory note and as contained in the Budget speech of the Finance Minister while introducing the Bill which has brought about amendment which reads as under:

The honourable High Court of Karnataka has held that luxury tax cannot be levied on accommodation provided by a club as the charges collected is not in the course of business. Therefore it is proposed to amend the definition of "hotel" to include club with retrospective effect.

Clearly spelt out the purpose and object of effecting such amendment; that this change in law is within the competence of the Legislature and therefore there is no occasion to invalidate any of the provisions of the amended Act including the definition clause as amended or the Explanation to the definition clause to Section 2(4) of the Act and therefore the writ petition deserves to be dismissed.

25. Learned Government Pleader submits that in the case of Bangalore Golf Club [1999] 115 STC 338 AP, this Court had clearly pointed out that the levy became bad because the petitioner therein was not carrying on the activity of letting out accommodation in the course of its business and it was with the express intention of getting over this lacunae that the law was amended in terms of Act 5 of 2000 and therefore the amended provisions should be given full effect to and assuming that the amendment is one with retrospective effect, that by itself cannot make any difference as the Legislature has the competence to amend the law with retrospective effect also. In this regard learned Government Pleader has also relied upon the decision of the Supreme Court in the case of Widia (India) Ltd. v. State of Karnataka reported in [2003] 132 STC 360 KAR.

26. Learned Government Pleader placing reliance on the decision of the division Bench of this Court in the case of Magaji Mhavarasa Kamakshi Bai Vs. Assistant Commissioner of Commercial Taxes, District Circle-1 and Another, , submits that the levy of luxury tax on persons and institutions like marriage halls has been upheld and the division Bench while examining the scope of such levy, has opined that the Legislature enjoys a wide and unfettered freedom in choosing the subject for tax; that so long as there is some reasonable basis for the classification made by the Legislature, the levy cannot be questioned on the ground of discrimination; that so long as the persons comprised within the class or group constitute a different or distinct group from persons who are left out there is no violation of the equality clause; that persons like the petitioners who are clubs are a class by themselves; that the provision is slightly different from the provision as are applicable to other persons who are also subjected to levy of tax is made insofar as clubs are concerned, that by itself does not amount to an act of discrimination, particularly, having regard to the aspect of wide leverage given to the State in such matters and therefore either the provisions of Sub-section (4) of Section 2 as amended by Act 5 of 2000 cannot be held to be unconstitutional or not even the Explanation as added by the amended Act 5 of 2000 to this definition clause of Section 2(4)-Hotel; that the argument of discrimination does not carry conviction and has to be rejected.

27. Mr. Narayana, learned Counsel appearing for some of the petitioners, has also made submissions in the light of submissions made by Sri Prasad that if the main provision of definition of the term "hotel" as occurring in Sub-section (4) of

Section 2 is to be properly understood, the Explanation is to be so understood as to be in consonance with the main provision, in which event, it should be held that in the case of clubs also the activity of letting out accommodation will not attract levy of luxury tax unless such activity is by way of business and not otherwise.

28. In the case of *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, , the Supreme Court had an occasion to examine the scope and meaning of "Explanation" in statutory provision and has by looking into the earlier judicial pronouncements, held that the Explanation is only for clarifying or amplifying what is contained in the main provision which by itself was not clear and not for the purpose of either bringing about a different purpose/ meaning than what was in the main provision or to add or include something afresh or new which was not available in the main provision. The Supreme Court was considering the meaning to be attributed to the proviso and Explanation as they occurred in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and for the purpose of understanding the effect of the provisions of the Explanation added to the proviso to Section 10(2) of the Act, whereby it was indicated that a default by the tenant in payment of rent even after the issue of two months notice by the landlord demanding the rent shall be construed as a wilful default for the purpose of deciding the question as to whether the default in payment of rent was wilful or not; that the conflict which arose in the case was that by adding an Explanation to the proviso which was already in existence to Sub-section (2) of Section 10 was void ab initio. Ultimately, it is to resolve the question of giving such meaning to the Explanation to be in consonance with the object of the Act, main intendment of the Act such as providing protection to the tenant and in considering the Explanation also in keeping with the same so that a mere lapse of time by itself can be conclusively held to be a wilful default on the part of the tenant when the rent is not paid even after the receipt of notice during the period of two months, but can still rebut a presumption that the default was wilful.

29. While the principle for interpreting an Explanation is by now well-settled, while construing taxing provisions and understanding the effect of an Explanation in the context of a particular provision and the statute in which the provision occurs, I am afraid that all general principles cannot automatically apply to resolve the question, as arriving at a solution to a mathematical problem by applying a theorem.

30. In the present case, it is undoubtedly true that, but for the Explanation even in respect of institutions like clubs, i.e., petitioners would have become liable for payment of luxury tax only if the activity of letting out a part of their building accommodation, was by way of business. However, the impugned Explanation leaves one with no doubt that insofar as organisations like clubs, lodging houses and holiday resorts are concerned, it matters little whether the activity is by way of business or otherwise. This can only mean one of two things. One is the

activity of letting out accommodation in a club, lodging house or a holiday resort is invariably by way of a business, in which event the adding of the Explanation does not make much difference. If not by way of business, if even otherwise the Legislature wants to levy tax on clubs, lodging houses and holiday resorts, irrespective of the activity being by way of business or not, for which the Legislature is definitely entitled to do and if it does so, while no exception can be taken to such a move, the question as it arises here is due to the inelegant manner in which the Legislature has gone about in achieving this object. It is undoubtedly true that the Explanation could have as well been a part of the main definition clause itself. Even the statement of objections and submission of learned Government Pleader is to the effect that the amendment was brought about with the definite object of roping in within the net of luxury tax, institutions like the petitioner-clubs irrespective of the activity being by way of business or otherwise. If a plain meaning to the words is given, the Explanation added to the definition has definitely achieved this object. The question whether the Explanation should further be watered down or read down to be, as one in consonance with the main provision, namely, the definition clause, is examined and if such an attempt is made, the entire Explanation is rendered negatory, in the sense, what is sought to be done by adding the Explanation, is put at naught. Insofar as the charging section, Section 3 is concerned, it has remained unchanged with levy being on the luxury being provided in a hotel and it is only in understanding the meaning of the word "hotel" the legislative exercises have been undertaken.

31. Unfortunately, the Legislature it appears whether in our country or abroad, including in England has always found language not an easy subject to deal with. What could be achieved easily has been unnecessarily complicated and the jugglery of amending the definition clause and adding any Explanation to it is only further complicating things. In fact, that is what the Supreme Court observed in the case of *M.P. Cement Manufacturers' Association Vs. State of Madhya Pradesh and Others*, , on which learned Counsel for the petitioner has placed reliance while quoting Lord Jessel's words expressed in *Spencer v. Metropolitan Board of Works* reported in [1882] 22 Ch D 142, which is as follows:

I must say that whoever is responsible for drafting...of this Act...has taken a great deal of trouble to raise a very difficult question, when he might with the greatest ease by using appropriate and well-known terms have avoided any question whatever.

32. In more recent times, Lord Denning, L.J., had an occasion to say as under in the case of *Seaford Court Estates Ltd. v. Asher* reported in [1949] 2 All ER 155:

The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been

guilty of some or other ambiguity. It would certainly save the Judges trouble if the Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of Legislature. A Judge should ask himself the question how, if the makers of the Act and themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

33. This view has been quoted with approval by the Supreme Court in the case of N.K. Jain and others Vs. C.K. Shah and others, .

34. When Lord Wrenbury said in Rex v. Kensington Income Tax Commissioner 6 TC 613, "no reliance can be placed upon an assumption of accuracy in the use of language in these Acts", Lord Wrenbury was not speaking in any different language.

35. The Supreme Court also had an occasion to examine the scope of understanding and interpreting a definition clause as it occurs in a statute. In the case of The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, , the Supreme Court laid down that:

It is well-settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances.

36. If such is the situation, even in England whose language is English, one can wonder what can be our plight with English being a foreign language. Whether the language is native or foreign, legislative drafters appear to be the same the world over and continue to believe in expressing in as inelegant a manner as is possible and that is so even in the present case. But, the question is as to whether that by itself makes a dent or difference. It did in the case of M.P. Cement Manufacturers' Association Vs. State of Madhya Pradesh and Others, , as the charging section was sought to be saved by the tinkering job of adding an

Explanation which nevertheless remained an attempt on the part of the State Legislature to levy duty or cess on the manufacture of electricity under the Madhya Pradesh Upkar Adhiniyam, 1981, which continued to suffer from the vice of want of legislative competence with or without the Explanation which had been added by an amending Act, as the power to levy duty on manufacturer of power was within the legislative competence of the Parliament under entry 84 of List I in the Seventh Schedule to the Constitution. Therefore, the exercise failed in that case and the Supreme Court declared the provision unconstitutional. The question is as to whether the same result follows in the present case.

37. I think it does not in the present case for the reason that, in the first instance, the legislative measure is well within the competence of the State Legislature; that it does not seek to create any artificial levy, but the levy is real and attempt is only in describing as to what all institutions and organisations according to the Legislature should be understood as a "hotel" for the purpose of the Act which is also well within the domain of the Legislature.

38. Even the change, if at all can be said to be a change brought about by the amending Act by adding the Explanation, cannot be said to be one bringing about a discriminatory act, inasmuch as, the clubs are treated as a class. The classification is a reasonable classification as clubs definitely can be grouped together as a class of institutions distinct from others left out of the group and of course levy of luxury tax on clubs definitely has nexus to the object of the main Act of levying tax on luxury provided in a hotel, club being defined as a "hotel" under the Act.

39. Though Sri Prasad, learned Counsel for the petitioner, has placed reliance on the decision of this Court in the case of Shamanur Kallappa and Sons v. State of Karnataka reported in [2004] 136 STC 132 KAR, I am of the view that the ratio in this decision while does not assist the case of the petitioners, in fact, it achieves quite the opposite result. Even in understanding the Explanation which occurs in a taxing statute, the interpretation, if possible, should be one to sustain and not to shoot down the Legislature at the slightest suspicion which according to justice Krishna Iyer amounts to judicial legicide.

40. Reliance placed on the decision of the Supreme Court in Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, , while explains the scope of charging section also does not assist the case of the petitioners. In the present case, the respondents have zealously guarded sanctity of the charging section as had been approved by the Supreme Court in the case of Express Hotels Private Ltd. Vs. State of Gujarat and Another, . Even otherwise, the charge being on the luxury provided in a hotel is quite clear and the present exercise is only in the context of understanding what is a hotel for the purposes of the Act. When once the Legislature emphatically says that such an institution is to be understood as a "hotel" for the purpose of this Act, I do not think there is further scope for calling in aid the tools of interpretation. It is for this reason that I am rejecting the submission of Sri Prasad, learned Counsel for the petitioner, for ascribing a

meaning to the Explanation so as to understand that even in respect of clubs, it becomes a "hotel" only if the activity of letting out is by way of business.

41. In the present case, the levy being within the competence of the State Legislature referable to entry 62 of List II of Schedule VII to the Constitution, there is nothing lacking on the part of the State Legislature to enact not merely the main Act, but the subsequent amendments also. There is no occasion for this Court to declare any of the provisions as unconstitutional or to read it down in a manner as is sought for on behalf of the petitioners.

42. For the very reason, the reliance placed by Mr. Prasad, learned Counsel for some of the petitioners, on the decision of this Court in *ITC Ltd., Kolkata v. State of Karnataka* reported in [2005] 4 KLJ 359 is also not of much assistance as there is no question of levy being either unambiguous in creating the charge or the levy under the charging section failing for uncertainty or ambiguity. In the circumstances, the challenge to the validity of the provisions of the Act as amended by Act No. 5 of 2000 on the ground that it is unconstitutional fails and the writ petitions are hereby dismissed.

43. Before parting, I would like to place on record my appreciation for the valuable assistance rendered by Sri R.V. Prasad and Sri Narayana, learned Counsels appearing for the petitioners and Sri Vedamurthy, learned Government Pleader appearing for the respondents in these writ petitions.