

**(1969) 11 KL CK 0011**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 734 of 1969**

K.K. Kuruvilla

APPELLANT

Vs

Executive Officer, Parathode Panchayat

RESPONDENT

**Date of Decision :** 14-11-1969

**Acts Referred:**

Constitution of India, 1950 — Article 276(2)

Kerala Panchayat Act, 1960 — Section 69, 69(1), 69(4), 69(5)

**Citation :** AIR 1971 Ker 54

**Hon'ble Judges :** P.T. Raman Nair, C.J; P. Govindan Nair, J; Mathew P. Muricken, J

**Bench :** Full Bench

**Advocate :** V.O. John and Jimmy John, for the Appellant; Mani J. Meenattoor, for the Respondent

**Final Decision :** Dismissed

## Judgement

Raman Nayar, C.J.—Section 66 of the Kerala Panchayats Act (The Act, for short) says (among other things) that every Panchayat shall levy in its area a profession tax. Section 69 lays down how this tax is to be levied:

"69. Profession tax.-- (1) The profession tax shall, subject to such rules as may be prescribed be levied every half year in every Panchayat area on-

(i) every company which transacts business in such Panchayat area for not less than sixty days in the aggregate in that half year; and

(ii) every person who in that half year-

(a) exercises a profession, art or calling or transacts business or holds any appointment, public or private-

(i) within such Panchayat area for not less than sixty days in the aggregate, or

(ii) without such Panchayat area but who resides in it for not less than sixty days in the aggregate, or,

(b) resides in such Panchayat area for not less than sixty days in the aggregate and is in receipt of any pension or income from investments.

(2) The profession tax shall be levied at such rate as may be fixed by the Panchayat not exceeding the maximum rates prescribed.

(3) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in Sub-section (1) as being liable to the tax.

(4) If a company or person proves that it or he has paid the sum due on account of the profession tax levied under this Act, or the companies or profession tax levied under the Trivandrum City Municipal Act, 1116, the Madras District Municipalities Act 1920, Travancore District Municipalities Act, 1116, or the Cochin Municipal Act 17 of 1113, or any tax of the nature of a profession tax imposed under the Cantonments Act, 1924, for the same half year to any Panchayat or Municipal Council or cantonment authority in the State of Kerala, such company or person shall not be liable by reason merely of change of place of business, exercise of profession, art or calling, appointment or residence to pay to any other Panchayat, Municipal Corporation or Municipal Council or cantonment, authority more than the difference between such sum and the amount to which it or he is otherwise liable for the profession or companies tax for the half year under this Act or any of the aforesaid Acts.

(5) Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority and exercises his profession, art or calling or transacts business or holds any appointment within the limits of any other local authority or authorities liable to profession tax for more than the higher of the amounts of tax leviable by any of the local authorities. In such cases the Government shall apportion the tax between the local authorities in such manner as they may deem fit and the decision of the Government shall be final:

Provided that where one of the local authorities concerned is a cantonment authority or the port authority of a major port, the decision of the Government shall be subject to the concurrence of the Central Government.

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2. The Appellant before us exercises a profession, the profession of a planter (we are using the word, "profession" to include everything the pursuit of which is mentioned in Section 69(1)(ii)(a) of the Act as attracting the tax, namely, a profession, art or calling or a business or an appointment) within the local limits of the local authority, namely, the Kanjiranpally Panchayat, where he resides. But he exercises the profession of a planter also within the limits of another local authority, namely, the Parathode Panchayat. The income derived by him from his profession in each Panchayat is sufficient to attract the maximum levy of Rs. 125/- per half year. He had paid the entire tax due for the two half years of 1964-65, namely, Rs. 250/-, to the Kanjirapally Panchayat; nevertheless the

Parathode Panchayat demanded of him the tax in respect of the income earned within its limits, namely, the maximum amount of Rupees 125/- for each of these half years. The appellant came with the present writ petition for quashing this demand made by the Parathode Panchayat, and, his petition having been dismissed by & learned single judge of this Court on the strength of the Division Bench ruling in Executive Officer v. Abraham. 1968 K LT 252 he has come with this appeal, his contention being that both Sub-section (4) and Sub-section (5) of Section 69 of the Act preclude the Parathode Panchayat from making any demand on him.

3. The case depends entirely on the true construction of Sub-section (4) and Sub-section (5) of Section 69. Sub-section (4) is a comparatively simple subsection. But Sub-section (5) because of its inept wording -- indeed that charge might well be levelled against the section as a whole -- presents considerable difficulty.

4. We shall first construe the subsections for ourselves, doubtless informed and forewarned by what other judges have said about them, and then proceed to consider the decisions, the real or apparent conflict between which has been responsible for this case coming before us, namely, the decisions in 1968 K LT 252 already referred to. Abraham v. Executive Authority, Peruvantiyanam Panchayat, O. P. No. 1393 of 1964 (Ker); Abraham v. Executive Officer 1966 K LT 115 and Ravi Ravi Nambudiripad v. The State of Kerala, O. P. No. 333 of 1966 (Ker).

5. For the proper construction of the sub-sections in question, it is necessary to examine the scheme of the section and the purpose of the sub-sections. Put briefly this is the scheme and the purpose: The tax is a tax on professions. It is leviable by Panchayats and other local authorities, primarily on the professional income earned by the person taxed within the limits of the taxing local authority. (Section 69(1)(ii)(a)(i) read with Section 69(3)). But a local authority within whose limits a professional man merely resides without exercising any profession therein would then go without any tax so far as he is concerned. So such an authority is allowed to tax him on the professional income earned by him without its limits. (Section 69(1)(ii)(a)(ii) read with Section 69(3)). Exercise of a profession or residence for 60 days is sufficient to attract the tax for the half year. This, and the liability to taxation both by the local authority of residence and the local authority or authorities of exercise of profession should not however result in the same professional income being taxed more than once. And hence Sub-sections (4) and (5) of Section 69.

6. Rid of the words unnecessary for the present purpose, sub-sections (1), (2) and (3) of the section may be re-written thus.

"69. Profession tax -- (1) The profession tax shall, subject to such rules as may be prescribed be, levied every half year in every Panchayat area on-

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(ii) every person who, in that half year-

(a) exercises a profession art or calling or transacts business or holds any appointment, public or private-

(i) within such Panchayat area for not less than sixty days in the aggregate, or

(ii) without such Panchayat area but who resides in it for not less than sixty days in the aggregate,

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(2) The profession tax shall be levied at such rates as may be fixed by the Panchayat not exceeding the maximum rates prescribed.

(3) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in Sub-section (1) as being liable to the tax."

7. Sub-section (3) of the section read with Rule 3 of the Kerala Panchayats (Profession Tax) Rules which prescribes the maximum rates of half yearly tax makes it clear that the subject-matter of the levy is the professional income earned during each half year. And sub-sections (1) and (3) of the section read with Sub-section (1) of Section 66 make it clear enough that the tax leviable by each Panchayat within the limits of which a person exercises a profession is on the income earned within these limits. (To levy a profession tax in its area on every person who exercises a profession within such area or who, exercising a profession without such area, resides in it, a Panchayat must be seized of either the person or the profession. If it is seized of the person his entire professional income, wherever earned, would be within its grasp. Not so if it is seized only of the profession. In such a case only the income earned within its limits would be within its reach and to tax income derived from the exercise of a profession without its area would be to levy a profession tax without and not within its area. Nor, in the case of such a levy, would there be any nexus between the Panchayat and the subject-matter of the tax, namely, the income earned from a profession exercised without its area by a person who does not reside within its area, to justify the levy. The mere exercise of a profession within its area would hardly be sufficient for taxing a profession exercised without its area. And it would be unduly burdensome if, in the case of a person exercising a profession within the limits of a number of local authorities each of these local authorities were to tax him not only on the income earned within its limits but on his aggregate income. He would have to suffer multiple taxation in respect of the same income which is against the canons of taxation and to obviate which, as we shall show sub-sections (4) and (5) of Section 69 are designed.

Reference may also be made to Rule 7 of the Rules which, recognizing this, provides for the computation of the income earned within the taxing Panchayat when a profession is exercised by the same person both within and without that Panchayat and for the levy of tax only on such income. Sub-section (1) of

Section 69 also provides that when a person resides in a Panchayat area without exercising any profession therein, that Panchayat is entitled to levy a tax on him in respect of the income earned by him by exercising a profession without that Panchayat area, which would mean the total income earned by him from his profession wherever it is earned within the area to which the Act applies, namely, the State of Kerala. And the subsection makes it clear that exercise of a profession, or residence within a Panchayat area, for not less than sixty days in the aggregate in a half year is sufficient to attract the tax on the income for the whole half year.

8. As we have already observed, the purpose of sub-sections (4) and (5) is to provide relief against taxation more than once in respect of the same income. This can arise in two ways. Sub-section (4) provides for one and Sub-section (5) for the other.

9. If a person changes his residence or place of business twice within a half year, it is theoretically possible for him to attract taxation at the hands of three local authorities in respect of the total income earned by him during that half year, although ordinarily a change of residence or place of business would not attract more than two. It is to guard against multiple taxation as a result of such a change of residence or place of business that Sub-section (4) is designed, and as we have already said, its construction is a comparatively simple matter. Its meaning is clear if we read the clause, "by reason merely of change of place of business, exercise of profession, art or calling, appointment or residence" occurring in the sub-section as "by reason merely of change of place of business, change of place of exercise of profession art or calling, change of place of appointment or change of place of residence". If the words, "change of place" are confined to business and do not qualify the remaining professional activities or residence, the sub-section would make no sense. The sub-section, it is clear, has no application in the present case since it is not as a result of any change of place of residence or place of business that the appellant has become liable to pay tax to two local authorities.

10. The other way in which double taxation in respect of the same income can arise and for which Sub-section (5) provides is this: If a person exercises his profession within the limits of more than one local authority within the limits of one of which he resides, he would be liable to pay tax to each local authority on the income earned by him within its limits. But then a person might reside within the limits of one Panchayat or other local authority without exercising any profession therein but might be exercising a profession within the limits of one or more other local authorities. In such a case, but for Sub-clause (ii) of Clause (a) of Sub-section (1) (ii) of the section the Panchayat within the local limits of which he merely resides would be able to levy no tax on him. Obviously it has a claim to tax him. His residence therein is by itself a sufficient nexus, and, moreover, he enjoys the amenities it provides (such as they are) as much as the amenities provided by the other local authorities within the local limits of which he

exercises a profession. That is why Sub-clause (ii) enables the Panchayat area within which he resides to tax him in respect of the income earned by him by the exercise of his profession without that area. The tax it would be entitled to levy on him, would be as we have already seen, the tax on the total professional income earned by him without its limits, subject, of course, to the Constitutional maximum of Rs. 250/- per year.

Now what is the result? Take the case of a person who merely resides within the limits of one local authority, but who exercises a profession within the limits of two or more other local authorities. To each of these other local authorities he would be liable to pay tax on the professional income earned by him within its limits, subject, of course, in each case, to the limit of Rs. 250 per. year. He would also be liable to pay the local authority within whose limits he merely resides the tax leviable on the total professional income earned by him. Thus, while each local authority where he exercises a profession taxes him only in respect of the income earned by him within its limits, so that in their case there is no question of the same income being taxed more than once -- the Constitutional maximum in Article 276(2), it will be recalled, is in respect of the tax "payable in respect of any one person to the State or to any one Municipality. District Board, Local Board or other local authority in the State" -- the local authority within whose limits he merely resides taxes him on the basis of the total professional income derived by him within the limits of the other local authorities. That taxation would be of the same income as is taxed by all the other local authorities together and would be a double taxation. It is to prevent this that Sub-section (5) is designed. What we have to consider is, on the one hand, the tax leviable on him by the local authority within whose limits he merely resides, and, on the other, the total of the taxes leviable on him by the local authorities within whose limits he exercises a profession. What the sub-section really means to say is that he is not liable to pay more than the higher of these two amounts. When he has paid the higher of the two amounts, it is for the local authorities who have not obtained their due share to go to the Government for an apportionment. And, despite the obscurity of its language, we think it is possible to read the sub-section in this way.

11. The Sub-section (Sub-section (5) of Section 69) is by no means a newcomer in the field of statute law. It has its counterpart in identical language, in the municipal and other local government statutes, not merely of this State but also of the Madras State. Yet counsel on both sides assure us that their industry has not been able to unearth any decision bearing on the construction of the sub-section except the few decisions of this Court to which we have already referred. However, we think it will be clear that the meaning we have attributed to the sub-section is the true meaning if we look into the history of the sub-section as it appears in the Madras District Municipalities Act, 1920. It appears there in identical language as Sub-section (4) of Section 93; and there can be little doubt that the sub-section as it appears in the Kerala Panchayats Act and the other local government statutes of this State is but a reproduction of that sub-section.

12. That Sub-section (Sub-section (4) of Section 93 of the Madras District Municipalities Act, 1920), as it emerged from the Select Committee, stood thus:

"(4) Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority and exercises his profession, art or calling or transacts business or holds any appointment within the limits of another local authority liable to profession tax for more than the higher of the amounts of the tax leviable by either of the local authorities. In such a case the Local Government shall apportion the tax between the local authorities in such manner as they may deem fit and the decision of the Local Government shall be final."

The use of the plural, "amounts" in juxtaposition with the words, "leviable by either" when there is only one amount leviable by each might be open to question. But the meaning is clear. A person who merely resides within the limits of one local authority without exercising any profession therein, but exercises a profession within the limits of another local authority, is not liable to pay more than the higher of the two amounts severally payable by him to the two authorities.

13. This, however, provided only for the simple case of a person merely residing within the limits of one local authority while exercising a profession within the limits of another local authority. It did not provide for the more complicated case of such a person exercising a profession within the limits of more than one other local authority. The sub-section as it stood, if applied to such a case, would lead to the result of the person getting away by paying the tax due to the local authority within the limits of which he merely resides if that be higher than the several amounts payable to the local authorities within whose limits he exercises a profession, whereas, if he resided within the limits of any one of the local authorities where he exercised a profession the sub-section would not (as we shall show) apply and he would have had to pay to each of the local authorities the tax payable on the income earned therein, in all the sum-total of the taxes payable to the several local authorities. To provide for this more complicated case, the sub-section was modified in its passage through the legislature; but what was done (possibly in a hurry in the exigency of the situation) was only to substitute the words, "any other" for, "another", to add the words, "or authorities" after "other local authority", and to substitute the words "by any of" for the words, "by either of" with the result that the sub-section is now worded (after the adaptation it has undergone) exactly like Sub-section (5) of Section 69 of the Kerala Panchayats Act, the statute we are now construing. It is, however, significant that the words "higher or highest" were not substituted for the word, "higher".

14. The only liberties we are taking with the language of the subsection is to read the words "who resides within the local limits of one local authority" as, "who resides within the local limits of one local authority without exercising any profession therein" -- this is not really taking a liberty but, as we shall see, only

stating expressly what is implied -- and the words "by any of" as meaning "either of", on the one hand the local authority within which the person concerned merely resides, and, on the other, the local authority or authorities within whose limits he exercises a profession. He is liable to pay only the amount payable to the former, namely, the local authority within whose limits he merely resides or the total of the amounts payable to the latter, namely, the local authority or authorities within whose limits he exercises a profession, whichever is higher. (Hence the word, "higher" and not "higher or highest", only two amounts and not more being contemplated. The former amount can be higher as, for example, when the rate is higher in the former local authority or when the person concerned exercises a profession within the area of a local authority as also within areas not falling within the limits of any local authority). These liberties, we venture to think, are not unwarranted and are quite essential if anomalies that might imperil the very vires of the sub-section are to be avoided.

15. It is said that on a plain reading the expression, "who resides within the limits of one local authority" occurring in the sub-section would take in also the case of a person who not merely resides but also exercises a profession within the limits of that local authority. By itself it no doubt would. But read it with what follows, "and exercises his profession x x x x within the limits of any other local authority or authorities" -- "his profession", not "a profession" --and surely the implication is that he does not exercise his profession within the limits of the first mentioned local authority where he resides. And, obviously, having regard to the purpose of the sub-section, what this expression refers to is the case falling within Sub-clause (ii) of Clause (a) of Sub-section (1) (ii) of the section, namely, the case of a person exercising a profession without a Panchayat area but residing within it. It is this element, namely, residence within the Panchayat area although exercising no profession therein, that makes him liable to tax on the profession exercised by him without that Panchayat area, and it is to this kind of residence that the expression in Sub-section (5) which we are now considering refers -- a person who both exercises a profession and resides within the same Panchayat area is caught by Sub-clause (i) and not by Sub-clause (ii) of Clause (a) the latter sub-clause being applicable only to a case where a profession is exercised without and not within the area of the taxing Panchayat. If the expression is not read in that manner, anomalous results would follow. By way of example, take the case of a person exercising a profession within the limits of two local authorities. If he happens to reside in one of them he need pay tax only on the professional income earned within the one or the other, whichever makes for the higher amount of tax. But, if he happens to reside within the limits of some other local authority he will have to pay tax on the professional income earned in both the two local authorities wherein he exercises his profession. But, if the expression is read in the manner we have read it he would have to pay tax on his entire professional income in either case, the sub-section not applying in the case of a person exercising a profession within the limits of the local authority wherein he resides.

16. It is contended that this anomaly is reached only by forsaking the literal construction of the sub-section which it is said is this: A person who resides within the limits of one local authority, whether or not he exercises any profession therein, and exercises a profession within the limits of one or more other local authorities, is liable to pay only the highest of the several amounts of the tax payable to the several local authorities. Apart from that, this is clearly not the literal construction, this would lead to the greater anomaly that while a person who exercises a profession within the limits of two or more local authorities but does not reside within the limits of any local authority (being, for instance, resident outside the State or in a place within the State which is not within the limits of any local authority -- that there is now in this State no place which does not fall within the limits of one local authority or other, at least so it is said, is an accident that does not affect the reasoning) would have to pay tax to each of them on the income earned therein, a person who resides within the limits of a local authority and exercises a profession within the limits of two or more such authorities will have to pay no more than the highest of the several amounts of tax payable to the several authorities.

17. In the case considered in 1968 K LT 252 the person assessed to tax was a resident of the Kanjirappally Panchayat. As to whether or not he exercised any profession therein, there was no evidence. But he did exercise the profession of a planter in the Kumaly Panchayat, and the income derived by him therefrom was sufficient to attract the maximum of Rs. 125/- per half year. He had paid the maximum tax of Rupees 125/- per half year levied on him by the Kanjirappally Panchayat for the six half years in question, and on his refusal to pay the tax demanded by the Kumaly Panchayat for the same half years, he was prosecuted by that Panchayat for an offence u/s 74 of the Act. He was acquitted, and the Panchayat came to this Court on appeal against the acquittal. Holding that the person was liable to pay tax to both Panchayats if he was exercising a profession in both, the Kanjirappally Panchayat assessing him on the income earned within its limits, but that the Kanjirappally Panchayat was not entitled to levy any tax on him if he was only residing and not exercising any profession therein and was only entitled to ask the Government for a share of the tax levied by other local authorities within whose limits he was exercising a profession, a division bench of this Court set aside the acquittal and ordered a retrial (With great respect we might observe that, if that be the true position, the person concerned was, in any case, liable to pay tax to the Kumaly Panchayat wherein he admittedly exercised a profession and to which he had admittedly paid nothing so that it is difficult to follow why a retrial was ordered. Moreover, the finding that the Kanjirappally Panchayat wherein he was residing was not entitled to tax him if he exercised no profession therein seems to be contrary to the clear provision in Sub-section (1) (ii) (a) (ii) read with Sub-sections (2) and (3) of Section 69). For doing so it omitted the words, "the higher of" occurring in Sub-section (5) of Section 69 and substituted the word "all" for "any of" thus transforming the first sentence of the sub-section so as to read:

"Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority and exercises his profession, art or calling or transacts business or holds any appointment within the limits of any other local authority or authorities liable to profession tax for more than the amounts of tax leviable by all the local authorities."

This invites the inquiry on why, in that case, the sub-section was necessary at all. For, in no circumstances can there be any question of a person being called upon to pay more than the total of the amounts of tax leviable by the local authorities entitled to tax him.

18. It so happened that this very person was exercising his profession of a planter also within the limits of the Peruvanthanam Panchayat -- we are stating the facts as simplified in the judgment in 1968 KLT 252 -- and the income he earned thereby was such as to attract the maximum tax of Rs. 125/- per half year. The Peruvanthanam Panchayat assessed him to profession tax notwithstanding that he had paid tax to the Kanjirappally Panchayat for the same period, and he came to this Court with the petition. O. P. No. 1393 of 1964, for a writ to quash the assessment made by the Peruvanthanam Panchayat. The petition was allowed on the ground that the petitioner had already paid the maximum total amount (of Rs. 250/- per annum) payable under Sub-section (5) of Section 69 of the Act to the Kanjirappally Panchayat. Therefore the Peruvanthanam Panchayat was not entitled to tax him but could only go to the Government for an apportionment. It was on this decision that the learned Magistrate based the acquittal in the case considered in 1968 KLT 252.

19. Taking each case by itself what do we have? Here is a man who, so far as the record in 1968 K LT 252 goes, merely resides within the Kanjirappally Panchayat without exercising any profession therein, but exercises a profession within some other Panchayat. On our reading of Section 69 of the Act, and, in particular, of Sub-section (5) thereof, he would be liable to pay only the amount of the tax leviable by the Kanjirappally Panchayat or the tax leviable by the other Panchayat whichever is higher. But, taking the two cases together and the fact that the same person figures in both as the person taxed, our reading would mean that he would be liable to pay only the tax leviable by the Kanjirappally Panchayat or the total of the taxes leviable by the other Panchayats (in each case, of course, subject to the Constitutional limit of Rs. 250/- per annum) whichever sum is higher. However, if he was not merely residing in the Kanjirappally Panchayat but was also exercising a profession therein, that Panchayat and every other local authority within whose limits he was exercising a profession would be entitled to tax him on the professional income earned within its limits. To such a case Sub-section (5) would have no application.

20. It would appear that it was this accident of the same person being the object of the tax in both cases that focussed the attention of the bench that heard 1968 KLT 252 to the anomalies that would follow on what it thought was the literal reading of Sub-section (5) of Section 69 (anomalies which it has set out at length

in paragraphs 9 and 11 of its judgment) and persuaded it to re-write the sub-section in the manner we have already indicated and to overrule the decision in O. P. No. 1393 of 1964 which we have already mentioned and 1966 KLT 115 a case we shall presently consider. But, as we have observed, its solution would lead to this construction of the sub-section, namely, that a person shall not be liable to pay more than the total of the amounts of tax leviable by the several local authorities that are entitled to tax him, a construction which as we have already indicated would render the sub-section altogether otiose since no one can be liable to pay more than the total of the several amounts he is liable to pay.

21. In O. P. No. 1393 of 1964 (Ker) there was, however, material to show that the person concerned exercised a profession in the Kanjirappally Panchayat where he resided as well as in the Peruvanthanam Panchayat. As we have already shown Sub-section (5) of Section 69 of the Act has no application in such a case and the person concerned was liable to pay tax to each Panchayat on the professional income earned by him within its limits. Therefore, it seems to us that this case was wrongly decided.

22. 1966 K LT 115 (We find after referring to the papers therein, although this does not appear from the judgment) was a case of person (possibly the very person who figured in O. P. No. 1393 of 1964 (Ker) and in 1968 K LT 252 being assessed to tax by several Panchayats on the basis of his exercising his profession in each one of them. It would appear that Sub-section (4) of Section 69 was applied so as to make him liable only for the highest of the several amounts; but, as we have seen, neither that sub-section nor Sub-section (5) applies to such a case and it seems to us that the case was wrongly decided.

23. O. P No. 333 of 1966 (Ker) decided by a Division Bench was a case where the person concerned merely resided within the limits of one local authority without exercising any profession therein, but exercised a profession in another. It was held, with great respect rightly, that he was not liable to pay more than the higher of the two amounts leviable by the two local authorities.

24. It follows from what we have said that since the appellant not merely resides within the limits of the Kanjirappally Panchayat but also exercises a profession therein he is liable to pay tax to that Panchayat on the professional income earned by him within its limits and to the Parathode Panchayat on the professional income earned by him within the limits of that Panchayat. So also to any other local authority within whose limits he is exercising a profession. Neither Sub-section (4) nor Sub-section (5) applies in such a case and his petition was rightly dismissed by the learned single judge.

25. In the result we dismiss this appeal but make no order as to costs.