

(1993) 04 MAD CK 0025

In the Madras High Court

Case No : Writ Petitions No"s. 11690 of 1992

K.M. Vijayan and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 246(3), 276
Criminal Procedure Code, 1973 (CrPC) — Section 165
Income Tax Act, 1961 — Section 132, 159
Tamil Nadu General Sales Tax Act, 1959 — Section 41
Tamil Nadu Tax on Professions, Trades, Callings and Employments Act, 1992 — Section 11, 2(6), 21, 3, 3(2)

Citation : (1995) 214 ITR 93 : (1993) 1 LW 721

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Advocate : K.M. Vijayan, for the Appellant; V.T. Gopalan, for the Respondent

Judgement

Abdul Hadi, J.—In this batch of writ petitions, some petitioners seek a declaration that the Tamil Nadu Tax on Professions, Trades, Callings

and Employments Act, 1992 (Tamil Nadu Act 24 of 1992) (hereinafter referred to as "the Act"), is ultra vires the power of the Tamil Nadu State

Legislature, and some others seek a declaration that article 276(2) of the Constitution of India, as amended by the Constitution (Sixtieth

Amendment) Act, 1988, itself, is violative of the proviso to article 368 of the Constitution of India. Some others seek a declaration that certain

particular provisions of the Act, are violative of articles 14 and 19 of the Constitution of India. The said Act, passed by the Tamil Nadu

Legislature, came into force on April 1, 1992, and sub-section (1) of section 3 thereof, the charging section, enables every local authority in Tamil

Nadu to levy tax on "profession, trade, calling and employment".

2. As per section 2(4) of the Act, "local authority" means, -

(a) the Municipal Corporations of Madras, Madurai, Coimbatore or.....; or

(b) a municipal council constituted under the Tamil Nadu District Municipalities Act, 1920; or

(c) a panchayat constituted under the Tamil Nadu Panchayats Act, 1958; or

(d).....

3. Earlier, different provisions in different enactments enabled the relevant corporation, municipality, panchayat or other local authority to levy such

a tax. But, as per section 31 of the Act, the Act overrides those provisions on and from April 1, 1992, and the said provisions on and from the

said date stand repealed.

4. The abovesaid levy, according to the Act, is on every person for every half year, subject to certain qualifications. As per section 2(6), "person

means any person who is engaged actively or otherwise in any profession, trade, calling or employment in the State of Tamil Nadu and includes a

Hindu undivided family, firm, company, corporation or other corporate body, any society, club or association, so engaged but does not include any

person employed on a casual basis. Section 3(2) of the Act, inter alia, states that the levy is at "such rates as determined in accordance with such

procedure as may be prescribed, by the local authority which shall not be less than the minimum and not more than the maximum specified in the

Schedule" to the Act. The said Schedule provides the rates of tax on different persons who are categorised in 20 different specific entries therein.

A residuary entry No. 21 is also there with reference to persons other than those so specifically mentioned, who are not covered by a relevant

notification mentioned therein. I may state here itself that both sides agree that so far, no such notification has been issued.

5. As per rule 3 of the Tamil Nadu Tax on Professions, Trades, Callings and Employments Rules, 1992 (hereinafter referred to as "the Rules"),

which were framed pursuant to the Act and which came into force from September 11, 1992, "every municipal authority shall determine by

resolution the rate of tax for every entry in the Schedule to the Act. which shall not be less than the minimum and not more than the maximum

specified in the said Schedule".

6. The Act has been passed pursuant to entry 60 of List II (State List) of the Seventh Schedule to the Constitution of India read with article 246(3)

thereof. The said entry runs as follows :

Taxes on professions, trades, callings and employments.

7. The relevant portions of the abovereferred to article 276, prior to the abovereferred to sixtieth amendment of the Constitution, which amended

only article 276(2), ran as follows :

276. (1) Notwithstanding anything in article 246, no law of the Legislature of State relating to taxes for the benefit of the State or of a

municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employment shall be invalid on

the ground that it relates to a tax on income.

(2) The total amount 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 by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided....

(3).....

8. The said sixtieth amendment only substituted the abovesaid sum of ""two hundred and fifty rupees"" by ""two thousand and five hundred rupees

and deleted the abovesaid proviso to article 276(2). The said proviso and the sub-article (3) thereof have not been extracted above since they

have no relevance in the present batch of writ petitions.

9. Thus, while prior to the abovesaid sixtieth amendment, as per article 276 read with the abovesaid entry 60 of List II, the State Legislatures Were

empowered to levy the abovesaid tax to the maximum extent of Rs. 250 per annum, the abovesaid amendment enables the State Legislatures to

levy the said tax even up to Rs. 2,500. Subsequent to the said sixtieth amendment, the Act has been passed and as per the abovereferred to

Schedule to the Act, which provides for the minimum and maximum rates of tax for every half year in respect of the abovereferred to various

persons, the maximum for the half year did not exceed Rs. 1,250, (that is, Rs. 2,500 for the full year).

10. The necessity for the incorporation of sub-article (1) to article 276 may also

be stated here itself. Entry 82 of List I (Union List) of the Seventh Schedule to the Constitution enables Parliament to levy tax on (non-agriculture) income. Since that taxing power has been given to Parliament pursuant to the said entry 82 read with article 246 of the Constitution of India, article 276(1) provides that notwithstanding the same, the State Legislatures are permitted to pass a law "relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, calling or employment, though of course as per sub-article (2) there of an upper limit has been prescribed for such a levy as noted above.

11. The abovesaid article 276(2) was amended pursuant to the power given to Parliament in article 368 of the Constitution of India for amending

the provisions thereof. Article 368(2) provide, in the proviso therein, as follows :

Provided that if such amendment seeks to make any change in -

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter 1 of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by

those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

12. In the light of the abovesaid provision, one of the contentions of some of the writ petitioners is that the abovereferred to amendment of article

276(2) requires the abovereferred to ratification.

13. Now, regarding the methodology of levy under the abovesaid Act, we may state the relevant provisions of the Act. Section 4 of the Act

provides that if the tax payable under the Act is by any person earning a salary, the employer shall deduct the tax from the salary payable to such

person, before such salary is paid to him. Then, section 5 of the Act provides that every such employer shall obtain a certificate of registration from

the executive authority in the prescribed manner. The term "executive authority" as per section 2(3) of the Act means the Commissioner or other

functionary of the local authority concerned under the respective Municipal Corporations, municipalities, panchayats, etc. Further, section 5 of the Act also provides that every person liable to pay the above tax other than a person earning salary, shall obtain a certificate of enrolment from the executive authority in the prescribed manner. Further, it provides that every person, required to obtain the abovesaid certificates of registration or the abovesaid certificate of enrolment, shall within thirty days from the date of commencement of the Act, apply to the executive authority for a certificate of registration or enrolment, as the case may be, in the prescribed form and the executive authority, after making such inquiry as he may deem fit within thirty days of the receipt of the application, grant such certificate, if the said application is in order. Further, it provides that the executive authority shall specify, in every certificate of enrolment, the amount of tax payable by the holder of the certificate according to the Schedule and the date before which. it shall be paid and that such certificate shall be deemed to be a notice of demand for the purpose of section 10. Further, section 5 also provides that if there is a wilful failure to apply for such registration or enrolment within the required time, the executive authority may, after giving him a reasonable opportunity of being heard, impose a penalty not exceeding rupees one hundred for each day of delay in the case of an employer and not exceeding rupees twenty for each day of delay in the case of others. Then, section 6 of the Act provides for the employer to file a return to the executive authority, showing the salaries paid by him to the employees and the amount of tax deducted in respect of such employees. The said return is to be accompanied by a treasury challan in proof of payment of the full amount of tax due according to the return. It further provides that where an employer, without reasonable cause, has failed to file such return within the required time, the executive authority may, after giving him a reasonable opportunity of being heard, impose upon him a penalty not exceeding twenty-five rupees for each day of delay. Then, section 7(1). of the Act provides that if the executive authority is satisfied that any return filed by any employer, he shall accept the return, and the amount of tax due from any employer shall be assessed separately for each year during which he is liable to pay tax. Further, according to the said section, if a registered employer fails to file the return, the executive authority may assess the tax due from such employer for

different parts of such year. It also provides that where an employer failed to so register or failed to file the return within the time allowed, the executive authority shall, after making such enquiry as he considers necessary, determine the tax due and assess the employer to the best of his judgment and issue a notice of demand for the tax so. assessed. As per section 8 of the Act, the amount of tax due from an enrolled person as specified in his enrolment certificate shall be paid in respect of him. Section 9 provides that where any employer fails to pay the tax as required by the Act, he shall, without prejudice to any other consequence or liability, be deemed to be an assessee in default in respect of the tax. Thus, the employer himself is deemed to be an assessee for the purpose of this Act. Then, section 10 of the Act provides that where a registered employer or an enrolled person fails to make payment of the tax Within the required time or date as specified in the notice of demand, the executive authority may, after giving him a reasonable opportunity of being heard, impose upon him a penalty not exceeding fifty per cent. of the amount of tax due. Then section 15 of the Act provides that if any question arises, about the interpretation of any entry in the Schedule before the commencement of assessment of an employer u/s 7, the executive authority shall make a reference in the case of Municipal Corporations, to the State Government, in the case of municipalities, to the Director of Municipal Administration; and in the case of panchayats, to the Director of Rural Development, and the decision of the State Government, the Director of Municipal Administration, the Director of Rural Development, as the case may be, on such questions shall be final. Section 16 of the Act provides for" appeals if any person or employer is aggrieved by any order of the executive authority in relation to the payment of tax (including penalty and interest).

14. Section 27 of the Act provides as follows

Save as otherwise provided in this Act. no order passed or proceeding taken by any authority or officer under this Act shall be called in question in any court, in any suit or application and no injunction shall be granted by any court in respect of any action taken or to be taken by such authority or officer in pursuance of any power conferred by or under this Act.

15. Now, then, Writ petitions have been filed by different categories of persons, alleging that they are illegally affected by the Act since the said

Act and particularly some of the abovereferred to provisions are unconstitutional. As already indicated, they also challenge the validity of the very

amendment made to article 276(2) of the Constitution of India. There is no necessity to advert to any further facts since all counsel made their

submissions purely on legal points, and since they did not very much advert to the facts.

16. In this batch, about 25 counsel argued on behalf of the different writ petitioners, relying on several decisions of the Supreme Court and the

High Courts, and consolidating the several submissions made by them, we shall now deal with each one of them. one after another, in the light of

the arguments advanced by the learned Advocate-General to counter the abovesaid submissions of learned counsel for the petitioners.

17. We shall first take up the abovereferred to challenge made to the validity of the amendment to article 276(2) itself on the ground that the

abovereferred to requirement of ratification by the Legislature, mentioned in article 368 of the Constitution of India, has not been complied with.

This argument was made by learned counsel for some of the writ petitioners only. According to the said learned counsel, though expressly the

above-referred to entry 60 of List II of the Seventh Schedule has not been amended, the amendment of article 276(2) amounts to an amendment

of the said entry 60 itself. So, the amendment requires the abovereferred to ratification which was admittedly not secured. According to him, the

term ""any change"" referred to in the abovesaid proviso to article 368(2), would relate to qualitative or quantitative change as well. which need not

necessarily be also a direct or express change in the relevant provisions of the Constitution mentioned in clauses (a) to (e) therein. Further,

according to the said learned counsel, the quantitative change from the above maximum limit of tax of Rs. 250 to Rs. 2,500 is a definite change in

the scope of the abovesaid entry 60 of List II of the Seventh Schedule. Further, according to the said learned counsel, but for the abovereferred to

article 276(1), the abovereferred to entry 60 cannot stand by itself since it would be against another taxation entry in List I, viz., entry 82,

empowering Parliament to levy tax on income. According to the said learned counsel in view of this unique provision also, the abovesaid

amendment of article 276(2) of the Constitution of India would amount to amendment of entry 60 of List II itself. On the other hand, the learned

senior Central Government standing counsel argues that the abovesaid entry 60 has not been changed at all and that, therefore, no ratification is necessary at all.

18. We have considered the rival submissions in this regard. This ratification question came before the Supreme Court in *Sajjan Singh Vs. State of*

Rajasthan, . There, where the Constitution. (Seventeenth Amendment) Act, 1964, by which article 31A, coming under Part III of the Constitution,

was amended, the argument was that though Part III was not expressly included in clauses (a) to (e) of the proviso to article 368(2), the abovesaid

amendment of article 31A amounted to effect a "change" in article 226, which comes under Chapter V to Part VI, one of the provisions,

mentioned in clause (b) of the said proviso and that hence, required the abovesaid ratification. In repelling this argument, the Supreme Court

observed that in dealing with such a question as to whether the abovesaid ratification is necessary or not, the basis to be adopted is to find the pith

and substance of the amendment. In that context, the Supreme Court observed thus (at page 851) :

It is true that as a result of the amendment of the fundamental rights, the area over which the powers prescribed by article 226 would operate may

be reduced, but apparently, the Constitution-makers took the view that the diminution in the area over which the High Courts' powers under

article 226 operate, would not necessarily take the case under the proviso".

19. Proceeding further, the Supreme Court observed as follows (at page 851) :

If the effect of the amendment made in the fundamental rights on the powers of the High Courts prescribed by article 226, is indirect, incidental, or

is otherwise of an insignificant order, it may be that the proviso will not apply. . . . The answer to this question would depend upon the effect of the

amendment made in the fundamental rights.

20. The Supreme Court finally held that the effect of the abovesaid amendment was only incidental and insignificant and the said Seventeenth

Amendment did not attract the abovesaid proviso.

21. We are also of the view that in the present case also, the effect of the abovesaid amendment of article 276(2) on the abovesaid entry 60 of List

II cannot be called a direct or substantial amendment. Further, the said amendment is only beneficial to the States. Further, in the present case, as

per entry 60, the relevant tax is only on professions, trades, callings and employments and not on income which comes under entry 82. Simply

because article 276(1) provides that no State law levying tax on such professions, etc., shall be invalid on the ground that it relates to a tax on

income, it does not mean that the tax contemplated under entry 60 of List II is a tax on income.

22. Even in *R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another*, , which no doubt, dealt with tax on ""circumstances and property"" levied

by the Uttar Pradesh State Legislature, it was held that the said tax on ""circumstances and property"" was a tax ""on status of an individual and not

tax on income"" and that it was covered by entries 49, 60 and 58 of List II of the Seventh Schedule to the Constitution. In the said case, the

Supreme Court also held that one of the components of the impugned tax, namely, the component of ""circumstances"" was referable to other entries

in addition to entry 60. Further, in *Sushil Chander Anand Vs. State of U.P. and Others*, which dealt with entry 60 in relation to another enactment

of Uttar Pradesh, it was held that the said Act did not tax income, but trades, callings, professions and employments and that it was within the

legislative competence of the Uttar Pradesh Legislature. The following observation there is significant (at page 322) :

The present entry, as already pointed out earlier, is No. 60 of List 2. It is clearly provided therein that the tax can be imposed for the benefit of a

State also in addition to that of a local body. The legislative history of the tax shows that originally it was levied only for the benefit of or for the

purpose of a local body. Now it can be imposed also in order to augment the revenues of a State. That is why the expression "for the benefit of"

has been used.

23. The following observation in *MR. KAMTA PRASAD AGGARWAL ETC. Vs. EXECUTIVE OFFICER, BALLABGARH and Another*, , is

also worth mentioning here (at page 686) :

A tax on profession is not necessarily connected with income. This is clear from the tax on professions imposed by several municipal authorities at

certain rates mentioned in the relevant statutes. A tax on income can be imposed if there is income. A tax on profession can be imposed if a person

carries on a profession. Such a tax on profession is irrespective of the question of

income.

24. Another submission on behalf of the writ petitioners is that originally the abovereferred to tax was levied by different local bodies under

different provisions of different enactments, but that the present enactment repeals those provisions of the different enactments and consolidates the

law in one enactment and that such a consolidation hits at the independence of local self-government. In this connection, the following observation

in *Municipal Corporation of Delhi Vs. Children Book Trust*, , was relied on by learned counsel for the petitioners : (at page 1465) :

Every municipality is a local self-Government. Therefore, in order that it may sustain itself a power of taxation has been delegated to municipal

bodies. The taxes are local taxes for local needs. Such taxes must obviously differ from one municipality to another. It is impossible for the

Legislature to pass statute for the imposition of such taxes in local areas. In a democratic set up where the municipalities need the proceeds of

these taxes for their own administration, it would be but proper to leave to these municipalities the power to impose and collect taxes.

Learned counsel laid emphasis on the abovesaid sentence ""it is impossible for the Legislature to pass a statute for the imposition of such taxes in

local areas"". But, on the other hand, the learned Advocate-General, arguing for the respondents, drew our attention to the following observations

of the Supreme Court in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, , dealing with rules of construction of observations of high

judicial authorities like the Supreme Court :

Now, at first blush, these observations do seem to support the contention of the detenus. But there are two very good reasons why I do not think

these observations can be of much help in the determination of the question before us. In the first place. .. Moreover, it must be remembered that

when we are considering the observations of a high to relate the observations of a judge to the precise issues before him and to confine such

observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended

his remarks to have a wider ambit. It is not possible for judges always to express their judgments so as to exclude entirely the risk that in some

subsequent case their language may be misapplied and any attempt at such

perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards the case in hand.

25. We have considered the abovesaid rival submissions in this regard and we see very great force in the argument of the learned Advocate-

General, particularly in the light of the abovereferred to observations of the Supreme Court. In view of the abovereferred to observations of the

Supreme Court in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, , we do not think that the other observation in *Municipal*

Corporation of Delhi Vs. Children Book Trust, : ""It is impossible for the Legislature to pass a statute for the imposition of such taxes in local areas

can be taken literally so as to apply it at its face value in all situations; the said observation should be only taken as made in the context of facts in

the said case since the learned judges who made the above observation did not make it clear that they intended their remarks to have a wider

ambit. That apart, we also find that in the succeeding paragraph 46 of the said judgment itself, the learned judges (who decided *Municipal*

Corporation of Delhi Vs. Children Book Trust, , point out thus :

The local authorities do not act as the Legislature when they impose a tax but they do so as the agent of State Legislature.

26. If that is so, there is no bar for the State Legislature, the principal, to enact a consolidated law, applicable to all of its agents, the local bodies.

27. Nextly, the learned Advocate-General, generally, also points out two decisions holding that the abovesaid entry 60 of List II read with article

246 empowers the State Legislatures to pass a law levying the abovereferred to tax. They are *Megha Singh and Co. and Others Vs. The State of*

Punjab and Others, of five judges and Bar Council of A. P. v. Govt. of Andhra Pradesh [1994] 210 ITR 203; [1992] 2 An. WR 531 (AP) [DB].

We also find that in the abovereferred to Bar Council of Andhra Pradesh, A.P. High Court *Junior Officers" Association and Others and Nuclear*

Fuel Complex Employees" Association Vs. Government of Andhra Pradesh and Others, , a Division Bench of the Andhra Pradesh High Court

upheld the legislative competency of a similar enactment, viz., the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act,

1987, passed by the Andhra State Legislature in the year 1987 itself. In fact even in 1976 itself, the Karnataka Legislature passed a similar

enactment, the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976. With reference to the said Act, there is also a recent

decision of the Karnataka High Court in J. Seetha Rama Sastry Vs. State of Karnataka and another, . In the said decision though there were other

attacks relating to some provisions therein, there was no attack regarding the legislative competency of the Karnataka State Legislature pursuant to

the abovereferred to entry 60 of List II. We may also point out incidentally what the said decision observed thus (at page 603) :

Under entry No. 60 of List II of Schedule VII, the Constitution created the field of legislation to levy "taxes on professions, trades, callings and

employments. This being a legislative head, it has to be given the widest scope. It is a well-known principle that legislative powers are given the

widest amplitude, unless specific limitations are found in the context of the power.

28. Here we may further point out that the ratio laid down in Bengal and Assam Investors Ltd. Vs. Commissioner of Income Tax, West Bengal, ,

relied on by one of the counsel for petitioners will have no application to the present case, because that only dealt with a case of ""business"" under

the Income Tax Act. But, here we are concerned not only with the term ""business"", but also with a much wider term ""calling"". In 100 LW 450

(supra) also a Division Bench of this court pointed out thus :

The material meaning from the Oxford English Dictionary given to the word "profession" is in a wider sense, "any calling or occupation by which a

person habitually earns his living". In Webster's Dictionary, the meaning of the word "profession" is given as "the occupation, if not mechanical.

agricultural or the like, to which one devotes himself, the business which one professes to understand and to follow for subsistence; calling,

vocation, and employment". The meaning of the word "calling" includes position, state or status in life.

29. Then, we may also refer to two submissions made by one of learned counsel for some of the petitioners. According to him, so far as legal

practitioners are concerned, if any profession tax could be levied on them, only Parliament has the legislative competence, and not the State

Legislature, since the basis of the levy, as it existed in the Act, in entry 2(a) of the Schedule to the Act, is the ""standing of the legal practitioners and

not their actual income"". To understand this submission, entry 78 of List I of the

Seventh Schedule and entry 26 of List III (Concurrent List) of the said Schedule have to be seen and they respectively run as follows

List I :

78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of the High Courts;

persons entitled to practice before the High Courts.

List III :

26. Legal, medical and other professions.

30. According to the said learned counsel, while the State Legislature may have the exclusive power to levy tax on profession by virtue of the

abovesaid entry 60 of List II, the legal and medical professions have been specifically excluded therefrom and made the subject of the legislative

entry in entry 26 of List III, and even from the said entry of the Concurrent List III, the legal practitioners, ""entitled to practise before the High

Courts"" have been brought within the exclusive domain of Parliament by virtue of the abovesaid entry 78 of List I. In this connection, he also drew

our attention to a passage in *The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another*, , which runs as follows :

If, however, it is purely a taxation measure then it would fall within entry 44 of the Concurrent List in which event both Parliament and the State

Legislature would be competent to enact legislation for the levy of the duty although it is only under entry 63 of List II that rates can be prescribed

by the State Legislature. In other words (while), the charging provisions can be enacted by both Parliament and the State Legislatures subject to

the provisions of article 254 of the Constitution, it is well-settled that the scheme of the entries in the various Lists is that taxation is not intended to

be comprised in the main subject in which "it might, on an extended construction, be regarded as included but is treated as a distinct matter for the

purpose of legislative competence". Even under the residuary power of legislation conferred by article 248, Parliament can only impose that tax

which is not mentioned in either List III or List II.

31. According to the said counsel, in view of the abovesaid Supreme Court decision, though on an extended construction, the abovesaid entry 26

of the Concurrent List may be taken to afford the power to levy tax on legal,

medical and other professions, that power has to be taken as falling only within the residuary entry 97 of List I.

32. We may straightaway point out that there is fallacy in the abovesaid argument. Though entry 78 of List I refers to persons entitled to practise before the High Courts, that entry by itself would, not authorise Parliament to levy ""profession"" tax on them, when there is a specific entry in List II

(State List), viz., entry 60 dealing with taxes on professions. As early as the decision in *M.P.V. Sundararamier and Co. Vs. The State of Andhra*

Pradesh and Another, , it has been held thus (at page 494)

Under the scheme of the entries in the Lists, taxation is regarded as a distinct matter and is separately set out.

33. Further, a similar submission made before the Supreme Court in relation to the legislative competency of the Punjab Legislature in passing the

enactment, Punjab Passengers and Goods Taxation Act, 1952, which was claimed by the said Punjab State as falling under entry 56 of List II,

was also repelled by the Supreme Court thus in *International Tourist Corporation and Others Vs. State of Haryana and Others*, :

There is a patent fallacy in the submission of Shri Sorabjee. Before exclusive legislative competence can be claimed for Parliament by resort to the

residuary power, the legislative incompetence of the State Legislature must be clearly established. Entry 97 itself is specific that a matter can be

brought under that entry only if it is not enumerated in List II or List III and in the case of a tax if is not mentioned in either of those Lists. In a

Federal Constitution like ours where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power

cannot be so expansively interpreted as to whittle down the power of the State Legislature. That might affect and jeopardize the very federal

principle. The federal nature of the Constitution demands that an interpretation which would allow the exercise of legislative power by Parliament

pursuant to the residuary powers vested in it to trench upon State legislation and which would thereby destroy or belittle State autonomy must be

rejected.

34. Entry 56 of List II runs as follows :

Taxes on goods and passengers carried by road or on inland waterways.

35. Likewise, entry 60 of List II also specifically provides for tax on profession, etc. While there is such a specific taxation entry, in List II (State

List) by no stretch of imagination can it be said that entry 78 of List I coupled with entry 97, the residuary entry in List I, authorises only Parliament

to levy profession tax on "persons entitled to practise before the High Courts".

36. Even the passage relied on by learned counsel, in *The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another*, , has emphasised this

aspect by observing as follows (at page 237) :

. . . . it is well-settled that the scheme of the entries in the various Lists is that taxation is not intended to be comprised in the main subject. in which

"it might, on an extended construction, be regarded as included but is treated as a distinct matter for the purpose of legislative competence". Even

under the residuary power of legislation conferred by article 248 (pursuant to which alone, the abovereferred to entry 97 finds a place in List I,

Parliament can only impose that tax which is not mentioned in either List III or List II." (underlining and the words within the brackets are ours).

No doubt, in *The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another*, , their Lordships, while dealing with levy of stamp duty on the

certificates of enrolment of advocates observed that if the said levy is part of the conditions prescribed by section 24 of the Act (Advocates Act),

which an advocate must satisfy before he becomes entitled to practise, any legislation relating to it would be within the competence of Parliament,

but that "if, however, it is purely a taxation measure, then it would fall within entry 44 of the Concurrent List, in which event, both Parliament and

the State Legislature would be competent to enact legislation for the levy of the duty although it is only under entry 63 of List II that rates can be

prescribed by the State Legislature. In other words, the charging provisions can be enacted by both Parliament and the State Legislatures, that is,

in the latter case, according to the Supreme Court, while the charging provisions can be enacted by both Parliament and the State Legislature, the

rates therein could be levied only by the State. This is so because of the abovesaid relevant entry, viz., entry 44 of the Concurrent List, which runs

as follows :

Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty",

and entry 63 of List II, which runs as follows :

Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

37. In other words, what the Supreme Court decided in the above case is that under entry 44 of List III, the power to levy the stamp duty on

documents is concurrent, but that the power to prescribe the rate of such levy is excluded from entry 44 of List III and is divided between

Parliament and the State Legislatures as follows :

If the instrument falls under the categories mentioned in entry 91 of List I, the power to prescribe the rate will belong to Parliament; for all other

instruments or documents the power to prescribe the rate belongs to the State Legislature, under entry 93 of List II.

Thus, the abovesaid decision of the Supreme Court turned on the interpretation to be put on relevant entries in the List, which the Supreme Court

was dealing with. But, in the present case, there is a clear taxation entry in List II, viz., entry 60, giving exclusive jurisdiction to the State

Legislatures to levy tax on professions irrespective of the persons involved therein. When that is so, no analogy can be drawn from the

abovereferred to the Supreme Court decision. In fact, the very same decision; as pointed out already; laid emphasis by observing thus (at page

237 of AIR 1973 SC) :

Even under the residuary power of legislation conferred by article 248, Parliament can only impose that tax which is not mentioned in either List

III or List II.

38. The constitution Bench of the Supreme Court also in *C. Rajagopalachari Vs. Corporation of Madras*, while dealing with the question whether

profession tax on a pensioner would fall within the abovesaid entry 60 in the State List, has held as following (at page 459) :

The relevant entry in the legislative Lists conferring taxing power on the State under which alone, if possible, the present levy could be supported

was item 60 in the State List in Schedule VII to the Constitution. . . .

39. The other submission of learned counsel for some of the petitioners is that the impugned enactment lacks "distributive justice" in having not

given due exemption to weaker sections and in this connection he relies on the decision in *Lingappa Pochanna Appelwar Vs. State of Maharashtra*

and Another, . No doubt, the concept of distributive justice in the sphere of law-making, as, pointed out in the abovesaid decision itself, involves,

inter alia, the removal of economic inequalities, and rectifying the injustice resulting from dealings of transactions between unequals in the society.

According to the said concept, the law should be used as an instrument of distributive justice to achieve fair division of wealth among the members

of the society based upon the principle : ""From each according to his capacity, to each according to his needs"". In the present enactment also,

looking at the rates prescribed in the Schedule, with reference to several to this concept by enabling the local authorities to levy a higher tax on

persons who have more capacity to pay. Exemption also has been given in some cases, for example, those who are earning a monthly salary of

less than Rs. 1,500 cannot be taxed at all. Even assuming that no exemption has been granted at all to any one, on that ground alone, the taxing

enactment cannot be assailed. The question whether any particular category of persons have to be exempted from the purview of a tax measure,

could only be left to the Legislature to decide in its wisdom. Very many observations of the Supreme Court, which are cited by the learned

Advocates-General and mentioned below in the succeeding paragraphs also enunciate the same principle. It must also be pointed out that

Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, did not deal with a taxing enactment, but only dealt with Maharashtra

Restoration of Lands to Scheduled Tribes Act, which annulled the illegal transfers effected by Scheduled Tribes, of agricultural lands which were

earlier given to them by the Government.

40. In Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , we also find the following observation

(at page 121) :

It is now well-settled that though taxing laws are not outside article 14, however, having regard to the wide variety of diverse economic criteria

that go into the formulation of fiscal policy, the Legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc.,

for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile,

discriminatory treatment, what is looked is looked into its phraseology. but the

real effect of its provisions. A Legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this court on the matter have permitted the Legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.

41. In the said decision, their Lordships also relied on the earlier decision in *Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai*

and Others, , which also observed as follows (at page 89) :

Given legislative competence, the Legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects

which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not

transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes

or exempts from tax some incomes or objects and not others. Nor is the mere fact that tax falls more heavily on some in the same category, by

itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the

basis of a valid "classification, that there would be a violation of article 14.

42. Their Lordships in *Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others*, after observing "it is

equally well-recognised that judicial veto is to be exercised only in cases that leave no room for reasonable doubt. Constitutionality is presumed",

also relied on the following words of James Bradley Thayer (at page 124) :

This rule recognises that, having regard to the great, complex ever unfolding exigencies of Government, much of which will seem unconstitutional

to one man, or body of men, may reasonably not seem so to another; that the Constitution often admits of different interpretation; that there is often

a range of choice and judgment; that in such cases the Constitution does not impose upon the Legislature any one specific opinion, but leaves open

this range of choice, and that whatever choice is rational is Constitutional.

43. The aboveresferred to concept of distributive justice was also referred to in a subsequent Supreme Court decision in *Spences Hotel Pvt. Ltd.*

and Another Vs. State of West Bengal and Others, in relation to the taxation measure itself. That was a case where under the West Bengal

Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, a luxury tax at a flat rate on air-conditioned floor space in hotels,

irrespective of locality, quality, standard or size of hotels, was levied. While holding that such tax was not violative of article 14, the Supreme Court

observed thus (at page 169) :

The ability or capacity to pay has no doubt been regarded as the test in determining the justness or equality of taxation. It is the goal towards

which the system has been, as it must be, steadily working. The equality, justness and fairness of this ideal is realised when one reflects upon the

vast wealth accumulated by the advantaged ones but not by the people in general. The idea of distributive justice is more or less intuitive in this

regard. This, however, has to harmonise well with proportional system of taxation, that is to say, tax at a fixed and uniform rate in proportion to the

taxable event, a measure of providing air-conditioned space. In possible cases of simple space taxation or pollution taxation courts may be a little

embarrassed in attempting to apply the principle of ability or capacity to pay. What exactly is meant by equality in taxation may, therefore, have to

be looked at from different angles. in different kinds of taxes. . . ."Perfect equality in taxation has been said, time and again, to be impossible and

unattainable. Approximation to it is all that can be had. Under any system of taxation, however wisely and. carefully framed, a disproportionate

share of the public burdens would be thrown on certain kinds of property, because they are visible and tangible, while, others are of a nature to

elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principle, or operate to produce gross inequality, so

that they cannot be deemed in any just sense proportional in their effect on those who are to bear the public charges that courts can interpose and

arrest the course of legislation by declaring such enactments void." "Perfectly equal taxation", it has been said, "will remain an unattainable good as

long as law and Government and man are imperfect." "Perfect uniformity and perfect equality of taxation", in all the aspects in which the human

mind can view it, is a baseless dream.

44. The abovereferred to Spences Hotel Pvt. Ltd. and Another Vs. State of West

Bengal and Others, also takes note of the earlier decision of the Supreme Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, which has been referred to by learned counsel for some of the writ petitioners, and holds that a legislation, classifying a particular kind of property, trade, profession or event for imposing tax equally and uniformly within such class is not violative of article 14 and that proportionate system of taxation, that is, tax at a fixed or uniform rate in proportion to taxable events; is valid.

45. We may also point out the following observation by the Supreme Court in *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India* and others, which no doubt, not refers to any taxation measure, but relating to fixation of price of levy sugar by the Legislature, wherein the Supreme Court ruled that rules of natural justice were not applicable to such a legislative action, fixing the said price (at page 1299) :

Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the Legislature or its agents as to matters within the province of either.

46. In this connection, the Supreme Court also relied on its earlier decision in *Gupta Sugar Works Vs. State of U.P. and Ors*, .

47. One other submission, which was made by learned counsel for some of the writ petitioners to attack the Act in its entirety is that there was no elected body in the abovesaid local authorities and there was no specific enactment substituting some other body to act in the absence of an elected body. Though the said submission was made; it was not substantiated. Anyway, even assuming that there was no elected body, it cannot be said that the abovesaid local authorities are not in existence or are not functioning through substituted bodies or agencies in the form of special officers duly appointed or empowered to exercise the powers of the respective elected bodies. Anyway, since there is no substantiation of the abovesaid submission, there is no necessity for us to deal with it any further.

48. Now, coming to the attack made on certain specific sections of the Act, we may first refer to the attack made with reference to section 3(2)(a)

(ii) and 3(2)(b) on the ground that the residence spoken to there in cannot be a sufficient nexus for the levy of the tax, in the case of a "person

other than a company. Section 3(2)(a)(ii) says that such a person (that is,

person other than a company) is one who in any half year is engaged actively or otherwise in any profession, trade, calling or employment outside the limits of the local authority concerned, but resides within the limits of such local authority for not less than sixty days in the aggregate shall pay the half-yearly tax. Likewise, section 3(2)(b) says that every such person, who in any half year, resides within the limits of a local authority for not less than sixty days in the aggregate, and is in receipt of any income from investments, shall pay the "half-yearly tax. But, in this regard, learned counsel for the petitioners did not substantiate their arguments with decided authorities, regarding the territorial nexus or connection between the persons sought to be charged with tax and the State of Tamil Nadu.

The general conception as to the scope of any tax is that, given sufficient territorial connection or nexus between the person sought to be charged with the tax and the State seeking to tax him, the tax may properly extend to that person (vide *Wallace Bros. and Co. Ltd. v. [1948]* 16 ITR 240).

49. In the present case, we think that there is sufficient territorial nexus when the abovereferred to persons are sought to be charged to tax under the abovesaid sections 3(2)(a)(ii) and section 3(2)(b), if we read down those provisions in the following way in the light of the definition of the term "person" u/s 2(6).

50. As per section 2(6), the term "person" (which no doubt includes a company) means "any person who is engaged actively or otherwise in any profession, trade, calling or employment in the State of Tamil Nadu". Therefore, a person, other than a company, who is not engaged actively or otherwise in any profession or calling or employment in the State of Tamil Nadu cannot be an assessable entity at all u/s 3. Therefore, even though section 3(2)(a)(ii) speaks of such a person generally as one engaged actively or otherwise, in any profession, trade, calling or employment outside the limits of such local authority, it should be read only as a person who even though is not so engaged within the limits of the local authority concerned, is so engaged at least with the State of Tamil Nadu. Likewise, in the case of section 3(2)(b) also unless the person concerned is in receipt, in the State of Tamil Nadu, of any income from investments (though not in such receipt within the local limits of the local authority concerned), he cannot be charged to tax. Only in that way that provision has to

be read down. If so viewed, there can be no infirmity in the above referred to two provisions.

51. No doubt, attack was also made that mere "receipt of any income from investments" cannot be characterised as "engaging actively or otherwise in any profession, trade, calling or employment". With reference to this aspect, reliance was placed on the following observation in C.

Rajagopalachari Vs. Corporation of Madras, :

Profession tax on persons in respect of any pension or incomes from investments is nothing but a tax on income.

52. But, in the said case, the question only related to "pension" received by the petitioner and the whole decision therein relates only to profession

tax levied on the pension of the petitioner, though there is also the abovesaid reference to the said tax on "income from investments" as being a tax

on income. But, with due respect, we feel that this reference without any discussion in that regard should be viewed only in the light of the other

observations of the Supreme Court itself referred to in paragraph 16 supra (see page 107), regarding the rules of construction of the observations

of the high judicial authorities like the Supreme Court (vide Additional District Magistrate, Jabalpur Vs. Shivakant Shukla,).

53. Further, the learned Advocate-General also drew our attention to the wide nature of the meaning of the term "calling" in entry 60 and also the

wide nature of the term "investment". In Venkataramaiya's Law Lexicon with Legal Maxims, Volume I, as against the term "calling", it is mentioned

that the word "calling" is very wide and according to its dictionary meaning, it means one's usual occupation, vocation, "business or trade. We

have also referred to in paragraph 19 (supra) (see page 109), the relevant observations of 100 LW 450 in this regard.

54. Regarding the term "investment" also, the abovesaid Law Lexicon mentions that, as a financial term, investment embraces purchases of stocks,

exchange, securities, or deposits of money in banks, buildings; or societies, or other financial institutions : Further, in the said Law Lexicon, the

following quotation also has been quoted from the words of Edwards J. :

There is no statutory definition of the word "investment". The word must therefore be read in its popular meaning. That popular meaning

embraces, I think, every mode of application of money which is intended to

return interest, income, or profit. . . .

So viewed, we think a person receiving ""income from investments"" would also come under the term ""person"" engaged actively or otherwise in any profession, trade, calling or employment, "" within the meaning of that term in the abovesaid section 2(6).

Then, section 3(7) is attacked on the ground that even though a company is not actually transacting business in a particular locality, it shall be liable

to pay tax if its agent is transacting the business within the limits of the said local authority. There is no merit in this argument since it is settled law

that the agent's business could be treated as the business of the principal.

The attack with reference to section 4 of the Act is as follows : Section 4, as already indicated, provides for the employer's liability to deduct and

pay tax on behalf of the employees, who earn salary or wage, which comes under entry 1(a) of the Schedule. Here, the argument is that there is no

individual ""assessment"" of tax at all on the respective employees before collecting the tax and that no opportunity to be heard is given to the

individual employees before assessment is made on their respective employers. In this regard, the decision in Tamil Nadu Government Officials'

Union v. Chief Secretary, Government of Tamil Nadu 100 LW 450 is relied on. No doubt, in the said decision since there was no provision for

making assessment on the employer in relation to his employees; a Division Bench of this court held that the profession tax levy on the employees

pursuant to the relevant provision under the pre-existing law, was illegal. But, now under the present enactment, there is section 7 which provides

for assessment of the employer in relation to the salaries of the employees. But the contention now is that even though provision is there for making

assessment on the employer, there is no opportunity to the employees under him, to be heard with reference to the said assessment. But, this

contention has no merit since even according to section 4, the employer is liable to pay tax on behalf of his employees and only in that capacity

assessment is made on him u/s 7, pursuant to the return filed by the employer u/s 6(1). Therefore, the employer acts as an agent of the employees

and if the agent is given the aforesaid opportunity, the principal, viz., the employee cannot complain.

Attack is also made on sections 5(6) and 6(3) of the Act. Sections 5(6) provides

for imposition of a penalty, not exceeding Rs. 100 for each day of delay in the case of an employer and not less than Rs. 20, for each day of delay in the case of others, where the employer or the other person concerned wilfully fails to apply for registration or enrolment within the required time. Then, section 6(3) provides for imposition of a penalty not exceeding Rs. 25 for each day of delay, where the employer, without reasonable cause, has failed to file the return to the executive authority, showing the salaries paid by him to the employees and the amount of tax deducted by him in respect of such employees, within the required time. The contention is that these penalties together with the tax levied are likely to exceed the abovementioned constitutional limit of Rs. 2,500 per year under article 276 of the Constitution, and so, section 5(6) and section 6(3) are against article 276(2) of the Constitution of India.

55. But, as rightly contended by the learned Advocate-General, penalty for the abovesaid failure cannot be equated with the tax and the limit that

is spoken to in article 276(2). In this connection, we may point out the following passages in *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs.*

Ajit Mills Limited and Another, :

On a scrutiny of all the decisions it is clear that the Legislature has power to levy a penalty for the proper enforcement of the taxing statute. . . .

After the decision in *R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad*, , where it was pointed out that it was competent for the

Legislature to provide penalties for the contravention of the provisions of the Act for its better enforcement, the provision in an enactment levying

such a penalty cannot be challenged.

56. No doubt, the abovesaid observations were made in a slightly different context from the present case, Yet, the abovesaid observations would also apply to the present case.

57. That apart, in both section 5(6) and section 6(3) of the Act, necessary safeguards are there for the assessee, since in both cases, the executive

authority, before levying penalty, has to give him a reasonable opportunity of being heard. Further, in the former case, unless there is a wilful failure,

and in the latter case, unless failure is without reasonable cause, penalty cannot be levied. In this connection, we may also state that *Khazan Chand*

and *Others Vs. State of Jammu and Kashmir and Others*, , relied on by one of

learned counsel for the petitioners has no application to the present case. There, if was no doubt held that the Legislature has competence to provide for payment of interest on the amount of tax due and that in other words the power to make a law with respect to a tax includes the power to make provisions with respect to all matters ancillary and incidental to the levy of tax. If at all, this would only show that though this may be different from interest or penalty levied under the tax law,. it is incidental to the levy of tax. So, what is mentioned in article 276(2) as the upper limit of Rs. 2,500 could only refer to the rate or quantum of tax proper, and not any interest of penalty levied incidentally. Viewing thus, any penalty levied under the abovereferred to the provisions cannot be taken into account in coming to a conclusion whether the abovereferred to upper limit has been exceeded or not.

58. The attack on section 11(1) of the Act is as follows : Section 11 provides that where an employer liable to pay tax u/s 4 dies, his legal representative shall be liable to pay tax (including any penalty and interest) due from such employer, in the like manner and to the same extent as the deceased employer. This, according to counsel, is against the general law since according to general law, such legal representative would be liable only to the extent of the estate inherited by him. We find that there is some force in this argument. But, we find from a corresponding section in the Income Tax Act, viz., section 159, that there to"" in a similar situation, the legal representative of the deceased assessee is personally liable for any tax payable by him in his capacity as a legal representative, if, while certain liability for tax remains undischarged, he creates a charge on, or disposes of, or parts with, any assets of the estate of the deceased which are in, or may come into, his possession, and such personal liability, however, shall be limited to the value of the assets so charged, disposed of, or parted with. In the above circumstances, if likewise we read down the abovesaid section 11 of the Act also, there will be no infirmity. So, we also hold that the section 11 should be read down so.

59. With reference to section 21 of the Act which provides for search and seizure of the accounts and documents in any premises where any profession, trade, calling or employment, which is liable to tax under the Act, is carried on or is suspected to be carried on, the attack is that even

when there is mere suspicion that in the abovesaid premises, the said profession, etc., are carried on, the abovesaid power to make search and seizure of the abovesaid accounts and documents has been given. According to counsel, this is absolutely without any guidelines, and hence, offends article 14 and also article 19(1)(g) of the Constitution of India. The said section 21 is also contrasted with section 132 of the Income Tax Act, 1961, which provides for such search and seizure. only where the officer concerned has the requisite "reason to believe", then only such search or seizure would be possible. But, according to counsel, in the present case, even on "suspicion", the abovesaid search and seizure are possible under the Act. In this connection, the decisions in Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., . Commissioner of Commercial Taxes and Others Vs. Ramkishan Shrikishan Jhaver and Others, and Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, were relied on. Here again, there is no doubt, just as in the Income Tax Act and other taxing enactments, the requisite "reason to believe" must be there on the part of a fairly high official before launching upon such search or seizure and there must also be proper safeguards provided u/s 165 of the Criminal Procedure Code. In the above circumstances, the expression "premises where any profession, etc., is suspected to be carried on" in section 21 of the Act, should be read down only as any premises where the executive authority has reason to believe that any profession, trade, etc., is carried on. Further, as provided in section 41 of the Tamil Nadu General Sales Tax Act, the safeguards provided u/s 165 of the Criminal Procedure Code also should apply to all searches made u/s 21 of the Act. Even though it is not specifically stated in the section, we think that the said safeguards must be applied to all searches made pursuant to section 21. If so read, we do not think that there is any infirmity in section 21.

60. Regarding the finality mentioned in the abovereferred to section 27 of the Act also, a faint attack was made. But, it is well-known that despite the abovereferred to stipulation regarding the finality attached to the Act, mentioned in section 27, the said finality cannot be a total or absolute one. First of all, that stipulation cannot be a bar to the invoking of the jurisdiction under articles 226 of the Constitution of India. That apart, despite

the stipulation of finality, even a regular civil suit Could be filed in certain cases as has been held in Dhulabhai and Others Vs. The State of Madhya

Pradesh and Another, . The following relevant observation therein is worth-mentioning (at page 89 of AIR 1969 SC) :

Where the statute gives a finality to the orders of the special Tribunals the civil court's jurisdiction must be held to be excluded if there is adequate

remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the

particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental Provisions of judicial

procedure.

61. One of us (Abdul Hadi J.) has also followed the said Supreme Court decision in an unreported decision dated November 25, 1992, in V.

Ganesan v. Sakthimani (S.A. No. 514 of 1982). Therefore, there is no infirmity in section 27 of the Act.

62. As against the faint attack made against the provision relating to reference and appeals, viz., sections 15 and 16, the learned Advocate-General

has pointed out that there are sufficient safeguards therein and he has also relied on the decision in Ram Bachan Lal Vs. The State of Bihar, ,

wherein it has been observed that the subject-matter of the profession tax is not very complicated and the procedure provided for the assessment

and review under the Bihar and Orissa Municipalities Act, 1922, is reasonable.

63. Yet another submission is that while moneylenders licensed under the Tamil Nadu Money Lenders Act, 1957, have been included in entry 15

of the Schedule, there is no mention in the Schedule about the inclusion of pawn brokers. But, the learned Advocate-General points out that the

proposed amendment to the law is going to include pawn brokers also in the Schedule specifically :

The attack on the entries 2(a),(b) and (c) of the Schedule to the Act, dealing with legal practitioners and different medical practitioners and fixing

the maximum and minimum rates of tax based on the standing of the abovesaid persons, is that the said standing has no nexus with the income

actually earned by the respective persons and that hence such a basis for the levy is unreasonable, offending article 14 of the Constitution of India,

unequals being treated as equals. Further, it is also pointed out that while in the

case of salary earning people, the basis for the abovesaid tax is their income, it is not so in the case of the legal and medical practitioners.

64. On the other hand, the learned Advocate-General, in this regard, drew our attention to the abovereferred to Bar Council of Andhra Pradesh,

A.P. High Court Junior Officers' Association and Others and Nuclear Fuel Complex Employees' Association Vs. Government of Andhra Pradesh

and Others, wherein in relation to the abovereferred to Andhra Pradesh tax on professions, etc., it has been held that classification of the members

of legal profession on the basis of the standing and the potentiality of the area where they practise, is not discriminative. The relevant observations

there, which only follow the other abovereferred to principles laid down by the Supreme Court, in this regard, are as follows (at page 210) :

The Legislature has wide latitude in classifying the subjects of taxation and fixation of appropriate rates of tax. It would be very difficult to apply a

particular yardstick in classifying subjects of taxation into different categories. May be, a junior advocate who entered into the profession, may not

be earning much at the threshold of his career when compared to a senior advocate. None the less, a classification of the members of the legal

profession made on the basis of their standing at the Bar and the potentiality of the area where they practise, for the purpose of levy of We also

adopt the same reasoning not only with regard to legal practitioners, but also with regard to other medical practitioners mentioned above. No

doubt, in the Andhra enactment, the potentiality of the area where the legal practitioners are practising, is also taken into account. But, simply

because is not taken into account in the Act, we do not think that the relevant provision is violative of article 14 of the Constitution of India. That

part, the learned Advocate-General also brought to our notice that the Legislature itself is now proposing to amend the law in this regard, whereby

the original minimum and maximum rates prescribed under the Act are going to be reduced in respect of the abovesaid legal and medical

practitioners, including the practitioners of ayurvedic and other systems of medicine. Further, the learned Advocate-General also points out that the

Legislature is also proposing to make amendment of the law, by which the maximum rate itself, is to be brought down from Rs. 1,250 per half year

to Rs. 1,020 per half year uniformly in the case of all categories of persons

mentioned in the Schedule.

Another argument, with reference to entry 8 dealing with ""dealers"" and entry 2(d), dealing with technical and professional consultants, including

chartered accountants, etc., and entry 2(e) dealing with certain agents, including insurance agents, registered or licensed under the Insurance Act,

1938, is that, without taking into account their income or capacity to pay, the tax has been levied at a flat rate, violating articles 14 and 19(1)(g) of

the Constitution of India. For example, it is pointed out that with reference to entry 8, the dealer is charged to tax based on his ""annual gross

turnover"", irrespective of his income earned, or loss sustained by him. Likewise, with regard to chartered accountants, etc., as per entry 2(d),

irrespective of their standing as chartered accountants and irrespective of their income, profession tax is sought to be levied at a flat rate. A similar

argument was made with reference to life insurance agents, etc. In the abovereferred to different categories of persons under entry 2(d) of the

Schedule, we find even plumbers are included in the said category along with chartered accountants and others and we also find that with reference

to this group of persons in entry 2(d) and also the group of persons under entry 2(e), there is no gradation of their standing in the said profession or

calling and irrespective of the said standing or experience all of them are charged to tax at an uniform rate, which may run between the minimum

Rs. 750 and the maximum Rs. 1,250 for every half year.

This appears to us to be patently arbitrary and hostile to the very subject and object of taxation. Even taking into account any one of the abovesaid

two groups, falling under entry 2(d) or 2(e), just for comparison with the abovereferred to corresponding Karnataka Act, we find that it has been

specifically provided in entry 2(c) of the Schedule to the said Karnataka Act, which provides for certain technical and professional consultants, that

if their standing is of less than two years, the tax is nil and thereafter, there is a gradation and the tax rate increases depending on the number of

years of standing or experience of the concerned persons in their respective fields of profession or calling. No doubt, chartered accountants do not

come under the abovereferred to entry 2(c) of the Schedule to the Karnataka Act and there is a separate entry 2(b) relating to chartered

accountants and. Here again, the tax is levied only if the standing in the said

profession is of two years or more. There is also a further upward gradation in the said entry. Likewise, in the case of the above-referred to agents, like life insurance agents, the relevant entry, viz., entry 2A of the Schedule to the Karnataka Act levies tax only if the annual income of such person is not less than Rs. 18,000.

Further, the allegations in the affidavit in support of Writ Petition No. 15528 of 1992, wherein there are about 80 writ petitioners, who are working as Life Insurance Corporation agents are : majority of them are small insurance agents having a very meagre income of Rs. 10,000 to Rs. 15,000 per year. A detailed statement is enclosed along with this writ petition, which goes to show the nature of income of all the petitioners. As per the provisions of the impugned Act, now each of the petitioners has to shell out Rs. 2,500 per year, which almost constitutes 25 per cent. of their income from the insurance business. I am advised to state that the above tax is really unreasonable restriction on the petitioners' fundamental right guaranteed under article 19(1)(g) of the Constitution of India. "These allegations do not seem to have been controverted specifically in the counter-affidavit of the State.

Anyway, on the whole, we think in respect of these two categories of persons, viz., who come under entries 2(d) and 2(e) of the Schedule to the Act, in the absence of the abovereferred to gradation or any minimum taxable limit, the said entries read with the relevant charging section would offend article 14 of the Constitution of India. Therefore, we strike down entries 2(d) and 2(e) of the Schedule to the Act as unconstitutional.

65. However, in the case of "dealers", who come under entry 8, we are unable to come to the same conclusion since there is a gradation therein and we are unable to hold the said entry read with the relevant charging section palpably arbitrary, violating article 14 or palpably unreasonable, violating article 19(1)(g) of the Constitution of India, viz., the fundamental rights to practise any profession, etc. Even though entry 8 rates are based only on annual gross turnovers and not correlated to income actually earned by the said dealers, normally there is likely to be correlation between the said turnover and the income realised. Therefore, we are unable to hold in the same way, as we did in the case of that abovereferred to entries 2(d) and 2(e) of the Schedule to the Act. We think that the

abovereferred to observations of the Supreme Court and other High Courts

would apply to the case of ""dealers"" in entry 8. Those observations, in essence, stated that unless the relevant provision is patently arbitrary and

hostile to the very subject of taxation, it cannot be struck down. We may also in this connection refer to one or two other decisions rendered by

Karnataka High Court, in relation to similar provisions in the abovereferred to Karnataka Tax on Professions, Trades, Callings and Employments

Act, 1976. In Dr. Sattur's Sushrushalaya Nursing Home and another Vs. State of Karnataka and another, in relation to the levy of tax on nursing

homes under the abovesaid Karnataka Act, the relevant observation is as follows (at page 488) :

The unit of taxation is the particular trade, profession, calling, etc., and, therefore, by treating a particular trade, profession or calling as a single

unit, without further classifying it into different categories, cannot be per se discriminatory. In the sphere of taxation, the Legislature has a wide

discretion to choose the subject of taxation; microscopic classification of the subject depending upon the capacity is not absolutely necessary. The

alleged discrimination should be established as patently arbitrary and hostile to the very subject of taxation before it can be struck down.

66. Similarly, in Sri Banashankari Leasing Co. Ltd. and another Vs. State of Karnataka and another, , the Karnataka High Court, while upholding

the constitutional validity of the profession tax levied under the abovesaid Karnataka enactment at a flat rate on companies, made the following

observation (at page 654) :

It is well-settled in law that equality means treating equals as equals and not unequals as equals. Once this position is arrived at, in that a company

is a person distinct from individuals, no principle of equality can ever arise. Then again, the law of equality is not one of arithmetic exactitude as El

Dorado will put it. Therefore, it is not open to the appellants to contend that the classification must have a nexus to the object to be achieved.

67. In this connection, the decision cited by learned counsel for the petitioners, viz., Sri Rani Lakshmi Ginning, Spinning and Weaving Mills Pvt.

Ltd. v. Textiles Commissioner [1984] WLR 514 has no application to the present case since the said decision did not deal with a taxing statute.

68. The attack with reference to levy on each partner of a firm as per entry 20 of

the Schedule to the Act is that not only is a "firm" charged to tax, but also, the partners therein. Further, while a partner in a registered firm is charged to tax, a partner in an unregistered firm is not, thereby offending article 14.

69. The first part of this argument has no merit. The assessment both of the firm and the partners, cannot be condemned on the ground of double taxation. But, with reference to the second part of the argument, we have to hold that the said distinction between a partner of a registered firm and a partner of an unregistered firm, certainly offends article 14. In this connection, we may also point out that the Karnataka High Court also in J.

Seetha Rama Sastry Vs. State of Karnataka and another, has held that such a levy is violative of the Constitution. Anyway, the learned Advocate-

General represents to us that here again the proposed amendment of the Act would altogether take away the charge on" the partners, and there will be levy only on the firm. Anyway since entry 20 is now in the statute book, offending article 14 of the Constitution of India, we hereby strike it down as unconstitutional.

70. Likewise, another entry, viz., entry 5, dealing with directors of companies also has to be struck down since the attack made in some of the petitions is that certain directors receive only sitting fees and that both the directors who only receive sitting fees and wholetime directors who receive full remuneration are treated alike for the levy of profession tax. In this regard also, the learned Advocate-General represents that the proposed amendment would make a distinction between the two and make a proper levy of each of the two kinds of directors. However, the present entry 5 as it now stands has to be struck down as unconstitutional and we hereby do so.

71. In Writ Petition : No. 1134 of 1993 filed by the Tamil Nadu Commerce Institutes' Association, learned counsel for the petitioner submits that the proprietors of such commerce institutes or typewriting institutes did not at all figure as one of the specified categories of persons in the Schedule to the Act and that even though no notification pursuant to the aboveresferred to residuary entry 21 of the said Schedule has been published so far certificates of enrolment in Form No. IV have been issued under rule 5(3) of the Rules, to the petitioners and their members, demanding profession

tax, In other words, according to the said counsel, even though no notification pursuant to entry 21 has been issued and even though the Rules have come into force only on September 11, 1992, and no resolution contemplated under rule 3 has been passed, the demand has been made illegally pursuant to entry 21. Unless the abovesaid notification has been issued; there is no possibility of fixing the rate of tax, according to the said counsel. With reference to this submission, we have only to declare that the local authority must conform to the relevant provisions of the Act and the Rules before they levy tax. It is not brought to our notice that any notification pursuant to the abovereferred to entry 21 has been issued and it is also not shown that the abovereferred to commerce or typewriting institutes would come under any other specified entry in the Schedule to the Act. No doubt, if such notification is issued, bringing such institutes under the purview of the Act, or if the institutes could be brought under any of the already specified other entries, the respondent-State can no doubt levy tax in accordance with the Act and the Rules framed thereunder.

72. Another attack by one counsel is that prior to the Act, there were provisions in the relevant enactments for crediting the profession tax collected in the relevant fund of the Local authority concerned, but that now, since there is repeal of the said pre-existing provisions relating to profession tax, the profession tax collected under the Act would go to the Consolidated Fund of the State. and the amount collected could not be spent exclusively by the local authority concerned and that, therefore, the Act is bad. This submission also has no basis since there is no repeal of such provisions by the Act. Only with reference to "levy and collection of the profession tax in the local authorities" there is repeal pursuant to the abovereferred to section 31. Section 31 only says that the provisions in the abovereferred to different enactments, "authorising the local authority to levy and collect any tax on professions, trades, callings or employments", shall stand repealed. After the collection of the tax, to which fund it should go, etc., is governed by other relevant provisions of those enactments, which have not been repealed. Therefore, there is no merit in this submission.

73. Another attack by some of learned counsel for the petitioners is that a notification, presumably under rule 3, has been issued even before the

Rules have been framed on September 11, 1992. In this connection, we were shown a notification issued in August, 1992, itself. According to

counsel, such notification will have no validity. This submission appears to be correct; If really a notification, pursuant to rule 3, has been issued

even before the Rules have come into force, certainly it cannot be valid and the authorities cannot pursue the matter further pursuant to the said

notification. Anyway, we think it is enough if we make the above position clear and declare that if the local authority concerned wants to proceed

further, it cannot rely on such notification issued prior to the commencement of the Rules, but must issue a fresh notification, conforming to the Act

and the Rules.

74. Another plea taken by one of learned counsel for the petitioners is that rule 2(3) in so far as it defines "municipal authority" is inconsistent with

the definition of "local authority" in the Act in section 2(4), has no merit. Section 2(4) defines "local authority", and sub-rule (3) of rule 2 only

identifies by defining what "municipal authority" means. The restricted definition of "municipal authority", in the Rules cannot in any manner be said

to be inconsistent with the definition of "local authority" in the Act since it is only when the definition in the Rules exceeds the ambit of the definition

contained in the Act, the question of inconsistency will arise. We find that in this case no such inconsistency exists.

75. In the result, entries 2(d) and (e), 5 and 20 of the Schedule to the Act, as they stand now, are struck down as unconstitutional. To that extent,

such of those writ petitions, in which those persons specified in entries 2(d) and (e); 5 and 20 are sought to be made assessable entities, are

allowed. All other writ petitions are dismissed subject to the declaration made by us in paragraphs 53 (see page 128) and 55 (see page 129)

above. However, in the circumstances of the case, we make no order as to costs.