
(1983) 01 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No's. 1454, 1463, 1508 and 1514 of 1982 (Bom.)

Mumbai Grahak Panchayat

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 246, 43

Citation : (1983) 85 BOMLR 218

Hon'ble Judges : Gadgil, J; Chandurkar, J

Bench : Division Bench

Judgement

Chandurkar, J.—All these petitions under Article 226 of the Constitution of India raise a question about the validity of the Maharashtra Luxury-cum-Entertainment and Amusement Tax on Holders of Television Sets Act, 1982 (hereinafter referred to as "the Act").

2. Writ petition No. 1454 of 1982 is filed by the Mumbai Grahak Panchayat, a society registered under the Societies Registration Act, 1960, Apart from the Chairman and the Honorary Secretary of the said Panchayat, there are three other petitioners in the said petition. The fourth petitioner is the Consumers Guidance Society of India of which the fifth petitioner is the vice-president. Petitioner No. 6 is a dealer in television sets carrying on business under the name and style of Sonal Agencies, which is a partnership firm. Writ petition No. 1463 of 1962 is filed by two individuals who are owners of television sets. The petitioner in writ petition No. 1508 of 1982 is a member of the Legislative Council of the State of Maharashtra. The petitioner in writ petition No. 1514 of 1982 is also an owner of a television set. As the main grounds on which the constitutional validity of the Act has been challenged in all these four petitions are the same, they have been heard together and are being disposed of by this judgment.

3. The State Legislature has enacted the Act which came into force on 1st July 1982. The charging provision in the Act is Section 3 which reads as follows:

Subject to the other provisions of this Act, there shall be levied and collected by the State Government the tax on and from every holder of television set or sets at the rate of Rs. 60 for each year per television set held or possessed by him.

In the definition section "tax" has been defined to mean "the luxury-cum-entertainment and amusement tax levied and collected under this Act." As Section 3 provides, the tax is to be levied on every holder of a television set or sets and is to be collected from the said holder. Section 2(c) defines "holder of a television set" as follows:

"Holder of a television set" means a person in whose name a licence is issued in respect of any television set under the Wireless Telegraphy Act, 1933, and includes a person, who is for the time being found in possession of any television set irrespective of its size or whether it is only black and white set or is colour set and irrespective of the fact whether the person holds such licence or not.

Under Section 4 every holder of a television set is liable to pay the amount of tax due from him for any year to the recovery officer on or before January, 31 of that year and if any holder fails to pay the amount due on or before the date aforesaid, he becomes liable to pay a penalty at the rate of Rs. 6 per month or part thereof per set till the tax and penalty are fully paid by him. Under Sub-section (2) of Section 4 there is a facility provided to a holder who is liable to pay the amount of tax for a period of six months and he has to pay the tax due at the rate of Rs. 30 for the half year on or before the last day of the month succeeding the month in which he became/becomes liable to pay the tax. The penalty for nonpayment of such tax is Rs. 3 per month. The year contemplated by Section 4(1) commences on the first day of January and half year means a period of six months commencing on the first day of January and ending on 30th June or a period of commencing on 1st day of July and ending on 31st of December. The only other provision which is relevant, having regard to the nature of the challenge made to the validity of the Act is the exemption provision in Section 5. u/s 5(1) tax is not leviable in respect of a television set owned and used by or on behalf of the Central Government or the State Government or any Municipal Corporation, Municipal Council, Zilla Parishad, Village Panchayat or Cantonment Board. Tax is also not leviable in respect of any closed-circuit television set. Tax is also not leviable in respect of any television set owned and used by an educational institution, which is recognised by the State Government or by any officer authorised by the State Government in this behalf and which, on an application made to the recovery officer in the prescribed form, is exempted by him from payment of the tax, subject to such terms and conditions as may be prescribed, and the recovery officer is entitled to make such enquiry as he deems fit while granting such exemption. Sub-section (4) of Section 5 needs to be quoted in extensor in view of the specific challenge made to the validity of that provision. It reads as follows:

In the case of television sets by a dealer in, or manufacturer of, such sets for the purposes of trade, on an application made to the Recovery Officer in the

prescribed form, and on making such inquiry as he deems fit, the Recovery Officer may grant a certificate that during the period the certificate is in force, the dealer or the manufacturer, as the case may be, shall be liable to pay the tax only in respect of three television sets. Any certificate granted by the Recovery Officer shall be subject to such terms and conditions as may be prescribed.

The effect of Sub-sections (4) and (5), therefore, is that where a dealer or a manufacturer of television sets keeps such sets for the purpose of trade, he is liable to pay tax in respect of three television sets, whatever be the number of television sets in his possession as a dealer. This is, however, not automatic and the liability is restricted only if the recovery officer grants a certificate to the dealer on an application to be made to the recovery officer.

4. There is a provision for refund made in Section 5(5) of the Act which provides that if an owner of a television set claims that he shall not use or proves that he has not used the set throughout the year or half year for which the tax is paid, the taxes paid by him can be refunded to him if he applies for a certificate of exemption from payment of tax of the relevant period during which he has not used the set. We are not concerned with Section 8 which provides for an appeal against the amount of tax and penalty. Section 10 provides for the rule-making power of the State Government and Section 11 provides for the power to the State Government to do anything which appears to it to be necessary or expedient for the purpose of removing any difficulty which arises in giving effect to any of the provisions of the Act. This power, however, cannot be exercised after the expiry of two years from the commencement of the Act. The Act is thus a very short measure having 11 sections.

5. Rules in the exercise of the rule-making power u/s 10 have been made by the State Government and published in Gazette dated June 29, 1982. Nothing much turns on the provisions of these rules and it is sufficient to mention that under the rules, a form of challan has been prescribed for payment of tax under the Act as well as forms of application for exemption to be made by an educational institution and certificates of exemption and refund to be issued by the recovery officer.

6. The charging provision in Section 3 of the Act makes it clear that the levy is on every holder of a television set. The definition of a "holder of a television set", which we have reproduced above is an inclusive definition. It refers to a person in whose name a licence is issued in respect of any television set under the Wireless Telegraphy Act of 1933. It further includes a person who is for the time being found in possession of any television set, whatever be its size and whether it is only black and white set or a colour set, irrespective of whether the said person holds such licence or not. The concept of holder of a television set emphasises the fact of possession of a television set, whether with or without a licence, and the effect of the definition of "holder of the television set" read with the charging provision in Section 3 is that a person, who is in possession of a television set, whether he has taken the licence required to be taken under the

Wireless Telegraphy Act, 1933, or not, becomes the subject of levy u/s 3.

7. This taxing measure has been enacted with a view to levy a tax which, according to the State Government, is covered by entry 62 of list II of the seventh schedule to the Constitution of India which reads as follows:

Taxes on luxuries, including taxes on entertainment, amusements, betting and gambling.

We are not concerned with betting and gambling which is included in entry 62.

8. The main ground on which the constitutional validity of the Act is challenged by the petitioners is want of legislative competence and further that the statute is a piece of colourable legislation. According to Mr. Gursahani, the learned Counsel for the petitioners, appearing in writ petition No. 1454 of 1982, whose arguments with regard to the grounds of constitutional validity have been adopted by the learned Counsel appearing in the three other petitions, the tax levied in the impugned enactment is not a tax on luxury at all. The learned Counsel has contended that the television medium is mainly used as a channel between the people and the Government and having regard to this avowed use of the medium, a television set can never be considered as a luxury. Another limb of the same argument of the learned Counsel is that legislation with regard to a television set really falls within entry 31 of list I of the seventh schedule which reads:

Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

The argument is that television is a wireless form of communication and expressly covered by entry 31 and it was, therefore, incompetent for the State Legislature to levy any tax in respect of a television set.

9. We shall deal in detail with these contentions. At the outset it is necessary to mention that the constitutional validity of the enactment is sought to be sustained by the learned Advocate-General appearing on behalf of the State on the ground that the legislation is expressly covered by entry 62, list II on the footing that a television set is a luxury, that the tax is on a luxury and further it is also a tax on entertainment because a television set is capable of being used for entertainment.

10. Before, however, we deal with the arguments with regard to constitutional validity in detail, it is briefly necessary to bear in mind the principles of construction of statutes which are relevant while considering a challenge made to a statutory enactment on the ground of legislative competence.

11. It is now well settled that there is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles and that in order to sustain the presumption of constitutionality, the Court may

take into consideration common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation. (See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, In *B. Banerjee Vs. Smt. Anita Pan*, , the Supreme Court after referring to the decision in *Ram Krishna Dalmia*'s case has observed (at p. 1150 para. 9):

Some courts have gone to the extent of holding that "there is a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; and "to doubt the constitutionality of a law is to resolve it in favour of its validity".

These principles have been reiterated by the Supreme Court in *Bachan Singh Vs. State of Punjab*, In para. 67 the Supreme Court observed as follows (at p. 916):

Behind the view that there is a presumption of constitutionality of a statute and the onus to rebut the same lies on those who challenge the legislation, is the rationale of judicial restraint, recognition of the limits of judicial review, a respect for the boundaries of legislative and judicial functions, and the judicial responsibility to guard the trespass from one side or the other.

12. It is also necessary to refer to the principle that while considering the question as to whether a legislation is covered by a particular entry in any of the lists in schedule VII, the various entries in the three lists are to be considered as fields of legislation and that the language of those entries should be given the widest scope of which their meaning is fairly capable and each general word should be held to extend to all ancillary or subsidiary matters which can form and reasonably be comprehended in it. It is really not necessary to quote any authorities which lay down this proposition, but if one is required, it will be found in *Calcutta Gas Co. v. State of West Bengal* A.I.R [1961] S.C. 1044. The Supreme Court while construing certain entries, the scope of which fell for consideration in that case, has observed in para. 8 as follows (at p. 1049):

Before construing the said entries, it would be useful to notice some of the well settled rules of interpretation laid down by the Federal Court and this Court in the matter of construing the entries. The power to legislate is given to the appropriate Legislatures by Article 246 of the Constitution. The entries in the three lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them.

13. In *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, Cantonment, , the Supreme Court was concerned with entry 50 in list II of the seventh schedule to the Government of India Act, 1935, which was similar to entry 62 in list II with which we are concerned., After referring to the earlier

decision of the Supreme Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, , the Supreme Court in para. 7 observed (at p. 585):

It has been accepted as well settled that in construing such an entry conferring legislative powers the widest, possible construction according to their meaning must be put upon the words used therein.

While dealing with the words "taxes on luxuries or entertainments or amusements" in entry 50 of list II of the seventh schedule to the Government of India Act, 1935, and referring to the above mentioned rule, it was observed as follows (at p. 585):

In view of this well established rule of interpretation, there can be no reason to construe the words "taxes on luxuries or entertainment or amusements" in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax.. The entry, as we have said, contemplates a law with respect to these matters regarded as objects and a law which imposes tax on the act of entertaining is within the entry whether it falls on the giver or the receiver of that entertainment.

14. One more principle which has to be borne in mind in the light of the contentions raised on the ground of colourable legislation is that the entries in the three legislative lists are divided into two groups, one relating to the power to tax and the other relating to the power of general legislation in respect of specified subjects. For the purposes of legislative competence, tax is considered as a distinct matter and the power to tax cannot be deduced from a general legislative entry as an ancillary power. The question of determining the validity of a taxing provision or a taxing statute depends upon the nature of the tax levied and normally this is to be ascertained on the basis of a charging provision because the subject of the charge is normally indicated in the charging provision. We may refer to the decision of the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, where in para. 55, the Supreme Court observed (at p. 494):

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

15. Bearing these principles in mind, we must now proceed to consider the challenge posed by the petitioners that the impugned legislation does not levy a tax on luxuries. The learned Counsel appearing for the petitioners have placed heavy reliance on the speech of the then Union Minister of Information and Broadcasting delivered in a symposium held in Bombay on July 14, 1982 on

"Media and Its Impact". The correctness of this speech not having been challenged before us, we might reproduce the material portion on which reliance is placed by the petitioners. It reads as follows:

The official medium AIR, TV, Films Division and Field Publicity, have the additional responsibility to act as a channel between the people and the Government to explain to the people the policies and programmes of the Government and to secure their participation in the implementation of these programmes.

The argument advanced is that ours is a welfare State and under the directive principles of State policy, it is the duty of the Government to secure the welfare of the people and where the avowed object, for which the T.V. was to be used, according to the Minister's statement, was to build a bridge between the Government and the people, the T.V. cannot be considered as a luxury. Reference was made to Article 43 in the Constitution which inter alia requires the State to endeavour to secure to all workers conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural principles. Reference was made to certain observations of Mr. Justice Krishna Iyer in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, where in para. 83 of the judgment, it was observed that (at p. 250):

Part IV, especially Article 89(b) and (c), is a futuristic mandate to the state with a message of transformation of the economic and social order.

The argument was that if the T.V. was intended to be utilised as a medium for transformation of the social order, then it can never be considered as a luxury.

16. The learned Advocate-General has contended before us that all that is necessary for the State to do in order to sustain the impugned legislation as valid, is to show that T.V. is an item of luxury in the present set of circumstances. For this he relies on the fact that the cost of television sets varies from Rs. 2800 to Rs. 5000, a colour television set being costly and priced between Rs. 8,000 and Rs. 15,000. He has referred us to the affidavit of the Joint Secretary in the Revenue and Forest Department, in which it is stated on the basis of the available statistics that the annual per capita income in India is Rs. 1536, while the per capita income in the State of Maharashtra is Rs. 2277 per annum. This statement is made on the basis of the contents in a brochure "Economic Survey of Maharashtra 1981-82" in which at page 9 the per capita State income for 1980-81 is given as Rs. 2277. The learned Advocate-General, therefore, contends that having regard to the income levels obtaining in the State and in the country, at the present level of prices of the television sets, they are outside the reach of a common man and that these sets constitute a luxury item. It is also stated that it is also a means of entertainment and amusement. Into this aspect we shall go later. It is also averred in the petition that a television set is an article conducive to enjoyment over and above the necessities of life and is not an indispensable item of common living. Therefore, according to the learned

Counsel, a television set is an item of luxury popularly used for entertainment and amusement. It is also stated that in terms of income less than 10% of the total population of the State of Maharashtra would be in a position to acquire television sets and that educative and entertainment value of a television set is mainly available to the population of cities like Bombay, Bangalore, Amritsar, Madras, Delhi, etc. and such facility is not available to a large number of small cities, towns and villages spread over the entire State of Maharashtra and other parts of the country. It is stated that because of the high prices and the nonavailability of transmission service in several parts of the country, the facilities provided by television can be enjoyed or made use of only by a limited and small proportion of the population of the State and indeed of the entire country. The learned Advocate-General has also referred us to some decisions in which even tobacco, which is consumed by the poorest of the poor in this country, has been treated as a luxury.

17. We have already pointed out earlier that the tax in the exercise of the legislative power under entry 62, list II, is a tax on goods or articles which can be described as luxuries and it may be levied on the person who possesses the luxury article. We may usefully refer to the decision of this Court in *State of Bombay v. Chamarbaugwalla* [1954] 57 Bom. L.R. 288, where the Division Bench has pointed out that the tax which can be imposed under entry 62 is a tax on goods or articles which constitute luxuries. The relevant observations are as follows (at p. 331):

With regard to luxuries it is significant to note that plural and not the singular is used, and the luxuries in respect of which a tax can be imposed under entry 62 is a tax on goods or articles which constitute luxuries, and it is again significant to note that the topic of luxuries only is to be found in entry 62 in the taxation power and not in either entry 33 or 34. That clearly shows that what was contemplated was a tax on certain articles or goods constituting luxuries and not legislation controlling an activity which may not be a necessary activity but may be unnecessary and in that sense a luxury.

This view has been approved by the Supreme Court in the *Western India Theatre's* case cited (*supra*).

18. Thus if it is possible for the State to substantiate their claim that having regard to the normal standard of living of a common man in the State of Maharashtra, a television set can be considered as luxury, the legislation could squarely fall within the legislative field in entry 62 of list II of schedule VII.

19. The next question to which attention must, therefore, be directed is, what is a luxury and what is the criterion on which an article can properly be described as a luxury obviously in contradistinction with necessities. Fortunately, it is not necessary for us to go into the various meanings of the word "luxury" given in several dictionaries because a tax on luxury has been considered by the Supreme Court and the Kerala High Court. We may, however, point out that a luxury tax is

a known concept in the field of taxation. In Black's Law Dictionary, 5th edition, "luxury tax" is described as follows:

Generic term for excise imposed on purchase of items which are not necessities; e.g. tax on Hquor or cigarettes.

The criterion for determining whether an article is an item of luxury or not cannot be uniform in all circumstances. What is a luxury in one part of the country may be a necessity in another part of the country or in some other country and the content of that concept must vary according to time and circumstances and there can never be an absolute definition of luxury. In Encyclopaedia Britannica, vol. 14, under the heading "luxury" at p. 454 the following appears:

The word luxury implies a relatively large consumption of wealth for nonessential pleasures. But there is no absolute definition of luxury, for the conception is relative to both time and person. It is a commonplace of history that the luxuries of one generation may become the necessities of a later period; no hard and fast line can be drawn between luxuries, comforts and necessities... The problem of luxury involves economic, social and ethical consideration.

It is further pointed out as follows:

Luxury is the inevitable concomitant of the growth of wealth, which brings with it the increase and the differentiation of wants. The fact that the fundamental needs of mankind for a minimum of food, clothing and protection from the weather are relatively soon satisfied giving rise to a demand for greater variety and finer qualities as soon as income rises above the bare subsistence level. This demand, which is especially strong among the feminine portion of the human race, has, in the past, been a great stimulus to economic progress for it has provided an enormously strong incentive to work and effort.

The concept of luxury must, therefore, necessarily involve a consideration of an article not only with reference to the resources of those who are in a position to buy or acquire that article but with reference to the general economic condition of the people as a whole. Government takes recourse to taxation in order to raise funds for the welfare of the people as a whole and where a taxing power is so utilized as to bring within the tax net a certain sector of society, which, by virtue of its affluence, may be in a position to acquire a costly commodity or article, the tax levied on such article could not be considered merely in the context of the fact that a particular sector of the community was easily in a position to acquire that article. The test must be whether generally the article can be so considered as to be necessary for a decent living or whether it is not indispensable. The test of indispensability seems to be one of the accepted tests while considering the question whether the particular article is a luxury or not. In *Chacko Chacko Kaithakuttu Veedu and Others Vs. Board of Revenue, State of Kerala and Others*, , the Kerala High Court was concerned with the validity of the Kerala Luxury Tax on Tobacco (Validation) Act (9 of 1964). that was a legislation enacted in exercise of legislative power under entry 62 in list II. It was admitted

in that case that tobacco was an article of luxury and that the legislative measure was a valid one. The question as to whether tobacco was an article of luxury or not was considered by the Supreme Court in *A.B. Abdul Kadir and Others Vs. State of Kerala*, where again the same Validation Act was the subject-matter of challenge. The argument there was that the tax on the vending and stocking of tobacco cannot be considered to be luxury tax as contemplated by entry 62 of list II of the seventh schedule to the Constitution and the question which fell for decision before the Supreme Court was whether tobacco can be considered to be an article of luxury. While dealing with this question, it was observed as follows (at p. 190):

The word "luxury" in the above context has not been used in the sense of something pertaining to the exclusive preserve of the rich. The fact that the use of an article is popular among the poor sections of the population would not detract from its description or nature of being an article of luxury. The connotation of the word "luxury is something which conduces enjoyment over and above the necessities of life. It denotes something which is superfluous and not indispensable and to which we take with a view to enjoy, amuse or entertain ourselves. An expenditure on something which is in excess of what is required for economic and personal well-being would be expenditure on luxury although the expenditure may be of a nature which is incurred by a large number of people, including those not economically well off. According to *Encyclopaedia Britannica*, luxury tax is a "tax on commodities or services that are considered to be luxuries rather than necessities".

It was no doubt observed further in that case that the use of tobacco has been found to have deleterious effect on health and a tax on tobacco has been recognised as a tax in the nature of luxury tax. A careful reading of that decision will, however, show that the view that tobacco was an article of luxury was not based on the ground that the consumption of tobacco had deleterious effect, but it was held that in spite of the fact that a large part of the population used tobacco, it did not cease to be an item which was not indispensable and something in excess of what was required for economic and personal well being. Therefore, the test by which the question as to whether a particular article is a luxury or not must be determined is whether the expenditure on that article is in excess of what is required for economic and personal well being.

20. It may, no doubt, be possible to say that even persons belonging to the middle class do manage to acquire a T.V. set, but merely on such consideration, a T.V. set does not become an article which can be described as indispensable and which is required for the economic and personal well being of the persons concerned. In a State with a per capita income of Rs. 2200 per year, where a large part of the population has its basic needs unfulfilled and somehow manage to eke out a living, it is difficult to see why a T.V. set, which is acquired by an extremely small proportion of people, could not be called an article of luxury. Once it is held that a T.V. set is an article of luxury, then the consequence is that

if you purchase a T.V. set, you must pay the tax if it is levied lawfully.

21. We are unable to appreciate how the speech of the then Minister can be of any assistance to the petitioners. One can never dispute that under the directive principles of State policy, it is the duty of the Government to bring about a social order contemplated by the Constitution. The Government may also be entitled to use the medium of the T.V. to establish a rapport with the people of the State. That, however, is not the only relevant fact for determination of the question as to whether in given circumstances a T.V. set is a luxury or not. The other use T.V. is capable of, namely, the use for the purpose of entertainment is also relevant for determining whether T.V. can be described as a luxury or a necessity. It may also be pointed out that in the same speech, the Minister has referred to some other functions of the medium in the form of T.V. In the latter part of the same speech it has been observed:

What should be the role of media in a developing country like ours? I have 110 doubt in my mind that the media should not only entertain, inform and educate, but. play a positive role in bringing about social change. They should create awareness among the people about the problems of the nation and widen their horizon. They should promote national unity and communal harmony. More than anything else, they should build the nation's confidence in its ability to achieve results.

A reference to the above will show that bringing about social change is one of the many roles which the medium is expected to play. Its other roles are "to entertain, inform and educate." Entertaining the people is also, even according to the speech on which reliance is placed by the petitioners, a role to be played by the medium. We shall presently deal with the question as to whether the tax in question amounts to a tax on entertainment, but for the present it will suffice to say that the role of the television as a medium of entertainment is not in dispute even in the speech relied upon. As a matter of fact it appears that even the educative value of the T.V. as a medium is highlighted by the fact that people are sought to be educated through the medium of entertainment. Instances are not unknown where films which highlight national unity and communal harmony are some times produced and in the case of such films, though the object is to highlight the necessity for national unity and communal harmony, that object is projected through entertainment and there is no inconsistency between the two. A performance or a feature on T.V. may be entertaining and at the same time it can also be educative and intended to bring about a social change as is many times found when some topical problems are tackled on the T.V. We are satisfied that the television in India is today clearly an article of luxury.

22. It has been argued by Mr. Gursahani on the basis of entry 55 in list II that entry must be so construed as to evince an intention in the Constitution not to vest power in the State to tax newspapers, T.V. and radio. Entry 55 in list II, in the seventh schedule to the Constitution reads as follows:

Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

Now, it is no doubt true that no taxes on advertisements which are broadcast by radio or television can be imposed by the State. It is, however, difficult to accept the argument that because no taxes on advertisements broadcast on television can be levied by the State a tax which is contemplated by entry 62, list II, can also not be levied. As already pointed out, tax Binder entry 62 is a tax on articles of luxury and it may be imposed on the person who possesses or holds the articles of luxury. There is nothing in entry 55 which could impinge on the power of the State legislature under entry 62.

23. It was then contended by Mr. Gursahani that the tax in question can also not be a tax on entertainment but that it is in effect a tax on an activity of seeing different programmes or viewing the programmes on the T.V. This contention was founded on the observations made by the Division Bench of this Court in Chamarbaugwalla's case cited supra. It may be recalled that the Bombay Lotteries and Prize Competitions Control and Tax Act of 1948 was held to be valid on the ground that the Act dealt with betting and gambling which was a part of entry 62. However, an alternative argument was also advanced in that case that the legislation dealt with entertainment and amusement or with luxuries. It is well-known that the Act dealt with prize competitions in the form of solving a crossword puzzle for which entries were received from various parts of India and foreign countries and the argument was that when a person solves crossword puzzle, he is amusing himself or entertaining himself and since the impugned law related to such solving of crossword puzzles, it was also covered by entertainment and amusement in entry 62 of list II. This argument was rejected with the following words (at p. 331):

The entertainment and amusement contemplated by entry 33 of list II with regard to legislation and entry 62 of list II with regard to taxes is not. the subjective entertainment or amusement which a person may receive by solving a crossword puzzle or by indulging in any other mental or intellectual pleasure. The entertainment or amusement contemplated is something objective outside the person amused or entertained, and with regard to the tax 0:1 entertainment and amusement, the tax also is on the spectator who witnesses some amusement or entertainment. Therefore, although it may be said that, a person who solves a crossword puzzle is amusing himself or entertaining himself, this is not the amusement which the Constitution contemplates in placing the topic of entertainments and amusements in the relevant entries.

As already pointed out, it was observed that what was contemplated by entry 62 was a tax on certain articles or goods constituting luxuries and not on articles which are necessities of life. It is a tax on an activity which may not be a necessary activity but may be unnecessary and in that sense a luxury.

24. The learned Counsel has also referred to the decision of the Madhya Pradesh

High Court in Calico Mills Ltd. Vs. State of Madhya Pradesh and Others, , where the question was whether a Calico Dome erected by the Calico Mills was subject to entertainment tax. The Calico Mills, which were engaged in the business of manufacture and sale of textiles, had put up a canvas canopy styling it as "calicloth dome" for display and sale of textile goods of the Calico Mills. The admission to the dome was unrestricted and free during the morning hours. It was restricted in the evening to bona fide purchasers who were required to obtain a token payments of Rs. 2/- for admission, but this amount was adjusted towards the price of the cloth purchased. By way of attraction, display of fabrics by mannequins, who used to wear and show off sarees, costumes, etc., was made. The question was whether the Calico Mills were liable for entertainment duty under the C.P. and Berar Entertainments Duty Act. Holding that the Mills were not liable, it was pointed out that the natural import of the term "entertainment" is amusement and gratification of some sort and the term connotes something in the nature of an organised entertainment. It was pointed out that an entertainment to come within the relevant Act must be some exhibition, performance, amusement, game or sport for the purpose of entertainment as is affording some sort of amusement or gratification to those who see or hear it.

25. Reference was made by one of the counsel for the petitioners to a decision of the Rajasthan High Court in Maharaja of Jaipur Museum Trust v. State of Rajasthan [1972] Tax L.R. 2428, where the question was whether a museum was a place of entertainment. It was pointed out by the Division Bench that to bring an exhibition into the definition of "entertainment" a continuous process of performance may not be necessary, but it is essential that the exhibition should be displayed with a view to provide amusement or gratification of any kind to the visitors and the fact that some persons might derive subjective gratification from exhibition, though not arranged for that purpose, is not relevant.

26. By its very nature, whether a particular activity amounts to entertainment or not is a question which will have to be decided on the facts of each case. It is, however difficult to accept the argument of the learned Counsel for the petitioners that the tax in question is a tax on activity of seeing different programmes. What is the subject of levy must depend primarily on the charging provision. The charging provision says that the tax is on a holder of a television set. Now, reading the charging section in the light of the legislative power in entry 62, if a holder of a luxury article can be taxed, and this is what the charging provision has done, it is difficult to construe this provision as taxing any particular activity. The reference to the decision in Chamarbaugwalla's case (supra) would not be apposite because the alternative argument in that case was that solving of crossword puzzle amounts to amusement or entertainment. The tax in the instant case is not being justified on any such ground. The ground on which it is being justified is that what is possessed by a person concerned is a luxury article and, therefore, he has been made liable to tax as contemplated by entry 62 in this case.

27. It is also difficult to accept the argument of Mr. Bhandare for one of the petitioners that this is not a tax on possession but that it is a tax on use of the T.V. set because Section 5 provides for a refund in case of non-use of the T.V. set. Now, by no canons of construction, a charging provision can be construed with reference to the provision for exemption. A charging provision must be construed in the normal canon of construction, namely, the intention of the legislature is to be gathered from the plain meaning of the words used by the legislature. The plain meaning of the words used by the legislature is that it is a tax on a holder of a television set. The legislature has no doubt provided for a refund u/s 5(5) if it is proved that the television set has not been used. Obviously an item of luxury is purchased by the person concerned for being put to such use as that item is capable of. But that does not mean that the tax is on the use to which the article is put. It is difficult to imagine a person purchasing the television set merely for the pleasure of putting it as an article of decoration in the living room without ever intending to switch it on. It is the normal conduct of a person that must be considered and it is impossible to dispute that whoever purchases a T.V. set purchases it for the purpose of using it and if having regard to this purpose, a provision for refund in case of non-use has been made, it will not lead to the conclusion that the tax levied is on the use. The tax levied is on the article which is capable of being used as a luxury.

28. It was then argued on behalf of the petitioners that the impugned law is a colourable piece of legislation. There are two grounds on which this challenge is sought to be substantiated. The first ground is that the legislation is a result of a wrong statement made by the Finance Minister on the debate of the bill and the second ground is that an article which is squarely covered by entry 31 in list I is being described as a luxury as a subterfuge or a device to somehow bring a legislation within an article in entry 62, list II.

29. We will take up the first ground first. The petitioners have relied on a statement made by the Finance Minister in the Maharashtra Legislative Assembly on March 13, 1982 in which it was represented that there was a fall in the receipts of entertainment duty on account of T.V. sets. The exact part of the speech is as follows:

The Resource Mobilisation Committee has recommended levy of a tax on T.V. in the light of the fact that in recent years an important source of revenue of the State Government, viz. entertainment duty on film shows has come in conflict with the increasing popularity of films and other entertainment programmes shown regularly on T.V.

What is argued is that this statement implies that as a result of the popularity of films and other entertainment programmes shown on the T.V., since the receipts from entertainment duty from the films have fallen, a necessity for a new tax on T.V. was sought to be made out, which would yield an additional income of about Rs. 3 crores.

30. It is said that this position is not correct. According to the learned Advocate-General, who has produced certain figures of normal yield of entertainment duty if cinema theatres were full and the actual collections, the statement made by the Finance Minister does not contain any representation, as has been made out on behalf of the petitioners.

31. It is difficult for us to appreciate how we can go into the reasons which prompted the legislature to pass the Bill which ultimately took the form of the impugned Act. The limited scope of the challenge to the validity of a piece of legislation is whether there was legislative competence and whether the legislation can be supported by the legislative entry under which the State claims that the statute has been enacted. What transpired within the legislature before the legislation was enacted would not, in our view, be a matter into which this Court can go to determine the validity of a statutory enactment. In any case, the nature of the challenge raised has nothing to do with the concept of colourable legislation. A legislation becomes colourable when it purports to fall within the scope of a legislative entry but is in substance not covered by the said entry and it impinges on a field which is beyond the competence of the legislature enacting a particular statute. As pointed out by the Supreme Court in *B.R. Shankaranarayana and Others Vs. The State of Mysore and Others*, , the whole doctrine of colourable legislation resolves itself into the question of competency of a particular legislature to enact a particular law and if the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant. As pointed out in that case, it is open to the Court to scrutinise the law to ascertain whether the legislature by a device purports to make a law, which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. This is some times referred to as a fraud on the legislative power. In *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, , it was pointed out that when a court says that a particular legislation is a colourable one, it means that the legislature has transgressed its legislative powers in a covert or indirect manner and it adopts a device to outstep the limits of its powers. When a legislation is challenged on the ground of it being colourable, then what the Court has to ascertain is whether the enactment substantially falls within the power expressly conferred by the Constitution upon the legislature which enacted it, what is generally known as a doctrine of pith and substance. If an enactment incidentally encroaches on matters assigned to another legislature, the Act, cannot be held to be invalid. It is also well established that regard must be had to the enactment as a whole, to its objects and to the scope and effect of its provisions. It is also well established that the doctrine of pith and substance is to be applied not only in cases of apparent conflict, but in any case, where the question arises whether a legislation is covered by a particular legislative power in exercise of which it is purported to be made.

32. Now, when the Act is challenged on the ground that what really fell within entry 31 of list I has been camouflaged to bring it into entry 62, list II, we must

consider the pith and substance of the legislation. It cannot be disputed, as already pointed out, that television will be covered by entry 31. However, what we are concerned with is not a general legislation with regard to television. We are concerned with a taxing law clearly imposing a tax on the holder of an article of luxury and television is taken to be an article of luxury. It is difficult to see how by any stretch of imagination, a taxing statute made in exercise of a legislative power of taxation could fall within the general entry in item 31, list I, and how it could be said that there was something being camouflaged or a subterfuge was being used. It is true that the Indian Wireless Telegraphy Act, 1933, deals with wireless communication. A television set will fall within the wireless telegraphy apparatus and the Wireless Telegraphy Act, 1933, is made in the exercise of the legislative power under entry 31 of list I. But because a legislation in the exercise of general legislative power has been made by the Central Legislature, a taxing power which is specifically assigned to the State under entry 62 is not affected and even if the item which is taxed as a luxury item is something which is covered by the general power of legislation, it could be brought within the taxing statute as long as it does not overstep the limits of entry 62.

33. A similar contention raised by Mr. Govilkar that the topic of telegraph which covers television is already occupied by the Indian Telegraph Act, 1885, and, therefore, on the principle of occupied field, the impugned legislation could not have been enacted must also be rejected.

34. The learned Advocate-General has brought to our notice several general entries in one list and specific entries with regard to taxation in another list in support of his contention that the taxing power is a specific power and the general power to legislate will not take away a specific taxing power granted to the State under list II. Some of the entries pointed out are the following: entry 54 in list I deals with regulation of mines and mineral development to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest. Taxing the mineral rights is permitted by entry 50, list II, which reads:

Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

35. Entry 30 in list I reads:

Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

36. Entry 56 in list II reads:

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

37. Entry 59 in list I reads:

Cultivation, manufacture, and sale for export, of opium.

38. Entry 51 in list II permits duty of excise on opium, Indian hemp and other narcotic drugs and narcotics if they are manufactured or produced in the State. It also permits countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. These are only some of the illustrations which have been pointed out to us by the learned Advocate-General.

39. We have already held above that the pith and substance of the impugned legislation is that it is a tax on an article of luxury levied on the holder or possessor of that article. The impugned legislation cannot be described as overlapping the field covered by either the Indian Telegraph Act, 1885, or the Indian Wireless Telegraphy Act, 1933. There is no question of the impugned Act being in conflict in any way with any of the two above mentioned Acts. We have also pointed out that the impugned Act is a taxing legislation for which an express provision has been made in entry 62 of list II of the seventh schedule to the Constitution.

40. We have earlier referred to the decision of the Supreme Court in *A.B. Abdul Kadir v. State of Kerala* (supra). It was contended in that case that the impugned legislation there, namely, the Kerala Luxury Tax on Tobacco (Validation) Act of 1964, which, according to the State, was made in the exercise of the legislative power under entry 62, list II, of schedule VII was in conflict with the power under entry 84 of list I. Entry 84 expressly provided for

Duties of excise on tobacco and other goods manufactured or produced in India except-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, ..

According to the State of Kerala, tobacco was an article of luxury and entry 84 of list I, which referred to duties of excise on tobacco, could not prevent the State from levying the tax on the vending of tobacco. This contention was upheld on the ground that the levy was sought to be made as luxury tax, which was within the competence of the State Legislature and not excise duty, which is beyond the legislative competence of the State Legislature. It was also pointed out that if the levy in question can be justified under a provision, which is within the legislative competence of the State legislature, the levy shall be held to be validly imposed and cannot be considered to be impermissible. There is, therefore, in our view, no substance in the contention that the impugned legislation is a piece of colourable legislation.

41. The impugned legislation was also sought to be justified by the learned Advocate-General on the ground that the tax is a tax on entertainment and amusement because a T.V. set as an article is used and can be used for the purpose of amusement by enjoying the programmes which are telecast on T.V.

42. Mr. Gursahani appearing on behalf of the petitioners as well as Mr. Bhandare, Mr. Govilkar and Mr. Cooper have contended that having regard to the avowed

object of the Department of Information and Broadcasting of the Government of India to use the T.V. as a medium for educating the people, the tax levied cannot be supported on the ground that it is a tax on entertainment. According to the learned Counsel, entertainment and amusement, if at all, is merely incidental.

43. Mr. Govilkar wanted to refer to a schedule which is filed by him along with the petition showing the break-up of the time during which T.V. programmes are telecast and on the basis of the said break-up, it was contended that a very small part of the total time is utilised for the purpose of entertainment.

44. Mr. Cooper has referred us to a report for the year 1980-81 of the Ministry of Information and Broadcasting which gave a resume of the working of the television network. That report states that television covered in that year 832-1 lack people (15.2 per cent, of total population) spreading over 2,00,100 sq. km. (6-1 per cent, of the total area of the country). The break-up of the population covered was - 350.5 lacks urban and 481.6 lacks rural. The learned Counsel has also further referred us to a statement in this report to the effect that the major thrust of the T.V. programme during the course of the year has been to focus on nation-building and developmental activities in different regions of the country. The argument is that there is no reference anywhere to any entertainment as being the object of introducing television.

45. Now, it is impossible to believe that when a person purchases a television set, his sole or the main object is to get educated by the programmes which are telecast on the T.V. It is common knowledge that a T.V. set is normally purchased to serve as a means of entertainment of such kind as is dished out by those who are in charge of the programmes on the T.V. When it is said that the object of T.V. is to educate the people, the idea is not to impart classroom education but to communicate with the people through the medium of entertainment because many times, topical subjects are put across through the medium of entertainment. Apart from that, even the brochure on which reliance is placed by Mr. Cooper will show that while referring to the schemes for improvement, it is stated that some of the schemes which are implemented or were in the process of implementation during 1980-81 were (1) production of specially commissioned plays, (2) T.V. films for children and adults.

46. Giving a list of schemes which are to be financed from the non-laps-able fund during the said financial year, it is stated that schemes for (1) musical programme, and (2) production of programmes of humor entertainment have been sanctioned. Even the report of the subsequent year 1981-82, which has also been produced by Mr. Cooper, shows that there is a substantial emphasis on entertainments. We are not concerned with the quality of the programmes because tastes throughout the country may vary, nor are we concerned with the time allocation for different programmes. It is clearly stated in para. 5.9.1 of the report that with a view to give an insight into the cultural heritage of India and to entertain the people, a substantial part of the telecast time on television is allotted to music consisting of both vocal and instrumental as well as classical,

folk and modern music. It is also stated in the said report in para. 5.10 that in each week a play is presented on television regularly dealing with different subjects and the co-operation of well-known dramatists is sought for this purpose. In para. 5.11.2 it is stated that in the different centres, apart from the programme "Chitrahar", other programmes of songs and dance in Hindi as well as in other Indian language are telecast. The report further mentions the fact that eminent film producers like Satyajit Ray, Amiya Gupta and others have been entrusted with the task of producing television films and this includes also comedies. In view of this well recognised role which T.V. plays in the field of entertainment, it is difficult to accept the argument that the television only incidentally results in entertainment and, therefore, the tax cannot be justified on the ground that it is a tax on entertainment and amusement.

47. We must give a very wide interpretation to the entry relating to entertainment and amusement and we must not allow ourselves to be influenced by the fact that the medium of television is likely to be used for some purpose other than entertainment and amusement, or that the tax appears to be a harsh imposition to people generally. In *Y.V. Srinivasamurthy v. State of Mysore* AIR [1959] S.C. 894, the Supreme Court was concerned with the validity of the Mysore Cinematograph Shows Tax Act which was sought to be justified on the ground that it is a tax on entertainment and amusement. While dealing with such a challenge, it was observed that the Court has no concern with the wisdom of the Legislature and it would be a dangerous precedent to allow the views of the members of the Court as to the serious consequences of excessive taxation to lead to a conclusion that the law is ultra vires. It was pointed out that the words "entertainments" and "amusements" in entry 62 are wide enough to include theatres, dramatic performances, cinemas, sports and the like. The argument there was that there is a conflict between entry 62, list II, and entry 60, list I. Entry 60 of list I read: "Sanctioning of cinematograph films for exhibition." It was held that there was no conflict. It is, therefore, clear to us that the tax can be sustained even on the ground that it is a tax on entertainments and amusements.

48. We shall now deal with the arguments of the other learned Counsel, namely, Mr. Bhandare, Mr. Govilkar and Mr. Cooper before we deal with the challenge made by Mr. Gursahani to the provisions of Section 5(4) of the Act. Mr. Bhandare has contended that the tax in question is an infringement on a right to privacy because, according to the learned Counsel, Section 5(5) of the Act enables a holder of a T.V. set, who has paid tax in respect of the set, to claim an exemption from payment of tax on the ground that he shall not use or has not used the set throughout the year for which the tax is paid. According to the learned Counsel, when the T.V. set holder is required to satisfy the recovery officer that he has not used the set for the year or half of the year for which the tax has been paid, he is required to account for his time and tell the recovery officer as to how he has spent his time during the period of six months. This, according to the learned Counsel, is patent interference with his right of privacy. Assistance was sought by the learned Counsel from the decisions of the Supreme Court in *Kharak Singh Vs.*

The State of U.P. and Others, and Gobind Vs. State of Madhya Pradesh and Another, Both the cases, in our view, have really no relevance to the question as to the validity of the tax in question. Section 5(5) is a provision relating to exemption. If a T.V. set holder wants to get a refund of the T.V. tax as provided u/s 5(5), then he must satisfy the appropriate authority that he has not used the T.V. set at all. It is difficult for us to appreciate how when a T.V. set holder is being required to satisfy the authority that he has not used the T.V. set at all, he is called upon by the authority concerned to disclose how in fact he has used his time. The recovery officer is not concerned with what the T.V. set holder did during every hour of the six months or the year in respect of which the exemption was being claimed. All that he is required to be satisfied with is that for certain reasons, which should be acceptable to him, the T.V. set has not been used by the holder thereof. The two cases relied upon show that the relevant regulations were challenged before the Supreme Court on the ground that they directly impinged upon the liberty of the person concerned under Article 21 of the Constitution. In Kharak Singh's case, regulation No. 236(b) of the U.P. Police Regulations, which authorised domiciliary visits was held to be violative of Article 21 of the Constitution because there was no law on which it could be justified. However, a similar legislation by the Madhya Pradesh Government was held to be good on the ground that it was authorised by Section 46(2)(c) of the Police Act, 1861. Explaining the decision in Kharak Singh's case, it was pointed out in para-6 of the judgment in Govind v. State of M.P. (supra), that the decision was based upon a concession made on behalf of the State of U.P. that the U.P. Police Regulations were not framed under any of the provisions of the Police Act. When it came to determining the validity of regulation 856 of the Madhya Pradesh Police Regulations, the Supreme Court held as follows (at p. 1381, para. 11):

We think that the provision in regulation 856 for domiciliary visits and other actions by the police is intended to prevent the commission of offences. The object of domiciliary visits is to see that the person subjected to surveillance is in his home and has, not gone out of it for commission of any offence. We are therefore of opinion that Regulations 855 and 856 have the force of law.

In the same decision, the Supreme Court held that assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterise as a fundamental right, it cannot be held that the right is absolute. Even if such be the case, we are unable to see any connection between any provision in the Act and the violation of any right of privacy.

49. That brings us to the contention of Mr. Govilkar that a holder of a T.V. set is exempted from a licence under the Wireless Telegraphy Act, 1933, and, therefore, the petitioner in his petition does not satisfy the description of "holder of a television set" given in Section 2(c) of the Act. It cannot be disputed that the first part of the definition of "holder of a television set" contemplates

a person in whose name a licence is issued in respect of any television set under the Wireless Telegraphy Act, 1933.

The latter part is an inclusive part and a person who is for the time being found in possession of any television set, irrespective of the fact whether the said person holds such licence or not, is also included in the definition of holder of a television set. Now, the argument of Mr. Govilkar is that in exercise of the powers conferred by Section 10 of the Indian Wireless Telegraphy Act, 1933, the Central Government has made certain rules which are known as the Indian Wireless Telegraphy (Possession) Rules, 1965. These rules contain a definition of a complete wireless set. Rule 5 of these rules provides for an exemption from holding a licence under the Indian Wireless Telegraphy Act, 1933. That rule reads as follows:

5. Exemption, for licence. Subject to the provisions of these rules, every person other than a dealer is exempted from the requirement of holding a licence to possess a wireless telegraphy apparatus in respect of

(a) such apparatus as is reasonably required for the purpose specified in a current licence issued to him u/s 4 of the Indian Telegraph Act, 1885, to establish, maintain and work a wireless telegraph;

(b) wireless telegraph apparatus other than complete wireless sets;

(c) wireless receiving apparatus, established in any motor vehicle which is exempted from registration in India, provided the said wireless apparatus is not used for the reception of wireless signals while in India;

(d) crystal wireless sets.

Now, in order to decide Mr. Govilkar's contention, it is not necessary for us to resolve the controversy which arose out of the construction to be placed on Rule 5. These rules are made by the Central Government and we were unable to obtain sufficient material from the learned Counsel for the Union of India as to the exact scope of this rule. While it was contended by the learned Advocate-General that this rule did not exempt a holder of a television set, which was a "complete wireless set", from obtaining a licence u/s 3 of the Wireless Telegraphy Act, 1933, Mr. Master on behalf of the Union of India was very firm in his stand that in view of the conditions of the licence issued under the Indian Telegraph Act, 1885, a holder of a T.V. set is exempted from obtaining the licence under the Wireless Telegraphy Act, 1933. We need not go into this question because resolving of this controversy does not appear to us to be germane to the question in issue before us. The limited question before us is whether by virtue of the exemption of a holder of a T.V. set from obtaining licence under the Wireless Telegraphy Act, 1933, which, according to the learned Counsel for the Union of India, is the correct position, a holder of a T.V. set cannot be subjected to the levy of tax contemplated by the impugned Act. Now, when the definition of holder of a television set refers to a person in whose name a licence is issued in

respect of any television set, the purpose is to identify the person who has to bear the charge. The words "a licence is issued" must necessarily in such a case mean a licence is required to be issued and the person has to be identified as a person who is liable to take out a licence under the Wireless Telegraphy Act, 1933. The fact that by some other rule-making power he is exempted from obtaining A licence because he holds a licence under the Indian Telegraphy Act, 1885, does not mean that he will not answer the description of a holder of a television set. Even otherwise, it appears to us that the contention is merely academic because mere possession of a television set, whether with or without a licence, also makes a person, who possesses a set, the subject of the charge. It is not, therefore, possible for us to accept the contention that because there is an exemption from a licence under the Indian Telegraphy Act, 1933, the possession of a television set is not made subject to tax under the Act.

50. A rather unusual argument was then advanced by Mr. Govilkar that the tax is an infringement on the petitioner's right to acquire information as a part of his right under Article 19(1)(a) as being an unreasonable restriction. The contention was advanced on the basis of certain observations made by the Supreme Court in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, the Supreme Court has observed as follows:

Freedom of speech goes to the heart of the natural right of an organised freedom-loving society to "impart and acquire information about that common interest".

It was pointed out that if any limitation is placed which results in the society being deprived of such right, then no doubt it would fall within the guaranteed freedom under Article 19(1)(a). It is difficult for us to see the relevance of Article 19(1)(a) of the Constitution in the context of the present Act. If there is an independent power of taxation as provided by entry 62 in schedule I, then merely because that tax is levied on an article which is used for entertainment and amusements and can also be used in order to acquire certain information, such power cannot be challenged on the ground that it impinges on Article 19(1)(a) of the Constitution. It is also well-known that when a statute is challenged on the ground that it interferes with or amounts to unreasonable restriction on a right under Article 19, such statute must be one which directly interferes with a fundamental right. (See *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, and the possible indirect and remote effects of a legislation upon any particular fundamental right cannot be said to constitute a restriction on that right (see *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*,

51. This must now bring us to the substantial challenge which is made to the provision of 5(4) the Act. Petitioner No. 6 in writ petition No. 1454 of 1982 is a dealer in television sets. The contention raised by Mr. Gursahani is that u/s 5(4) of the Act a dealer or manufacturer of television sets kept by him for the

purposes of trade is liable to pay tax in respect of three television sets. He has, however, to make application to the recovery officer in the prescribed form and on making such inquiry as the recovery officer deems fit, the recovery officer may grant a certificate. During the period of the certificate, the dealer is to pay tax only in respect of three television sets. The relevant rule dealing with such a case is Rule 7(2) of the Maharashtra Luxury-cum-Entertainment and Amusement Tax on Holders of Television Sets Rules, 1982 (hereinafter referred to as "the Rules") which reads as follows:

7(2). A dealer in, or manufacturer of television sets, who is desirous of obtaining from the Recovery Officer concerned a certificate under Sub-section (4) of Section 5, shall make an application to him in Form V. The recovery officer concerned shall, on receipt of such application and after making such inquiry as he deems fit, either refuse to grant the certificate by giving written intimation to the applicant together with reasons therefore, or grant the certificate in, and on the conditions mentioned in, Form VI.

Form V requires a dealer or the manufacturer to State that he is transacting business in television sets and he should, therefore, be granted a certificate "in respect of my/our liability to the payment of tax only on three Television Sets", Form VI is the form in which the certificate is issued. That form shows that, that certificate is in the nature of a certificate of payment of tax in respect of three television sets "kept by him/her/them for sale". Now, Section 5(4) purports to restrict the liability to pay tax in the case of a dealer or a manufacturer where the television sets are kept for the purposes of trade. On a construction of the different provisions of the Act, we have held that it levies a tax on luxury or entertainment or amusement because it is only then that it could be sustained under the legislative power under entry 62 of list II. It is, however, difficult for us to appreciate how a dealer or a manufacturer of a T.V. set, who keeps the television sets for the purposes of trade, can be said to be holding an item of luxury or an article from which he can derive either entertainment or amusement. It was feebly sought to be argued by the learned Advocate-General that even a dealer can derive some entertainment or amusement from a T.V. set kept in his show room. It is difficult for us to accept that argument. A dealer or a manufacturer expressly deals in a T.V. set or manufactures a T.V. set for the purposes of sale. They are not held by him as articles of luxury, though it may be said that he deals in an item of luxury. Holding an article of luxury for the purpose of trade is clearly not intended to be subject of taxation under the Act. The dealer is also not holding the T.V. set as a means of amusement or entertainment because he expressly holds it for the purposes of trade as is recognised by the provisions of Section 7(4) of the Act itself. Primarily under the main charging provision there is a liability to pay tax for every set. All that the exempting provision does is to reduce the number of sets for the payment of tax to only three sets. However, if the television set is not held by the manufacturer or the dealer as an article of luxury as such or as an article used for entertainment or amusement, it is difficult for us to see how such a dealer or

manufacturer could be subjected to the charge of T-V. tax under the impugned Act. The necessary corollary must, therefore, be that petitioner No. 6 is entitled to a declaration that as a dealer he is not liable to be subjected to the charge of the tax under the impugned enactment and the provision u/s 5(4) of the Act, which crystallizes his liability to the extent of three television sets must also be held to be beyond the legislative competence of the State legislature.

52. These were all the arguments advanced before us. In substance, the following propositions follow from our judgment:

(1) Having regard to the general economic conditions of the people in our country as a whole, a T.V. set must be considered as an article of luxury notwithstanding the fact that a more well-to-do section of the population may afford to buy a T.V. set.

(2) The Act is a valid piece of legislation being an Act which falls squarely under entry 62 of list II of schedule VII of the Constitution of India inasmuch as it is a tax on luxury.

(3) Even otherwise, the Act is a valid piece of legislation as levying a tax on entertainment and amusement and is within the legislative competence of the State legislature under entry 62, list II of schedule VII of the Constitution of India.

(4) The Act is not open to challenge on the ground that it is a piece of colourable legislation as the subject-matter is covered by entry 31. list I of schedule VII of the Constitution of India inasmuch as it is expressly a taxing statute enacted in exercise of a taxing power.

(5) The Act does not in any way infringe the rights of the petitioners under Article 19(1)(a) of the Constitution of India.

(6) The liability to pay tax under the impugned Act does not arise in the case of a dealer in or manufacturer of television sets kept for the purposes of trade.

(7) The provisions of Section 5(4), which fix the liability to payment of tax in the case of a dealer in or manufacturer of television sets kept for the purposes of trade to the extent of tax on three television sets, are consequentially ultra vires and invalid as the T.V. sets kept by a dealer in or manufacturer of such sets for the purpose of trade cannot be said to be held by him either as an article of luxury or for the purpose of entertainment or amusement.

53. Accordingly, writ petition No. 1454 of 1982 is partly allowed. The remaining three petitions are dismissed. Rule discharged. However, there will be no order as to costs of these petitions.

54. Mr. Bhandare, Mr. Gursahani and Mr. Govilkar request for leave to appeal to the Supreme Court. In our view, the view which we have taken does not admit of any doubt and we are not, therefore, inclined to grant leave to appeal to the Supreme Court.

55. A request has also been made that the operation of this judgment should be stayed for a period of 15 days. We had earlier- vacated the stay which was granted by the learned single Judge. Since there was no stay in operation so far, it would not be proper to stay the judgment of this Court delivered by us because that will mean that we are granting indirectly the stay of the enforcement of the Act which we had expressly declined to do at the interlocutory stage.