

(1967) 05 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 2598 to 2600, 3044 and 3490 of 1966

Sushil Chander Anand

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-05-1967

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 246, 254, 265
Uttar Pradesh Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam, 1965 — Section 2(12), 2(6), 3, 4, 5

Citation : AIR 1969 All 317

Hon'ble Judges : S.C. Manchanda, J;M.H. Beg, J;Jagdish Sahai, J

Bench : Full Bench

Advocate : M.A. Ansari, S.S. Bhatnagar, G.C. Bhattacharya and Ravi Swarup Dhavan, for the Appellant; S.C. and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—These are five connected writ petitions in which vires of the Uttar Pradesh Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam, 1965 (hereinafter referred to as the Adhiniyam), passed by the Uttar Pradesh Legislature has been challenged on the ground that the same is unconstitutional.

2. The preamble of the Adniniyam reads:

"An Act to provide for the levy of a tax on professions, trades, callings and employments in Uttar Pradesh."

The entry relied upon by the State in No. 60 of the Second List of the Seventh Schedule of the Constitution of India which reads:

"Taxes on professions, trades, callings and employments."

The Adhiniyam has got 24 sections. Clause (6) of Section 2 of the Adhiniyam defines a "person" and Clause (12) defines the "total gross income". Those

provisions are reproduced below:--

"2. (6) "person" includes a Hindu undivided family, company, an incorporated body, a firm, a society or any other association of persons;

x x x x (12) "total gross income" means the aggregate of income accruing or arising to a person within the State from any profession trade, calling other than agriculture or employment and includes the value of any perquisite or profit in lieu of salary."

Section 3 is the charging section and reads;

"3. Liability to tax.--Any person who, during the previous year or part thereof, carries on a trade, either himself or by an agent or representative, or who follows a profession or calling other than agriculture, or who is in employment, either wholly or in part within the State, shall subject to the provisions of this Act, pay, from and after the 1st day of April, 1966, for each financial year a tax in respect of such profession, trade, calling or employment, in addition to any tax, rate, duty or fee which he is liable to pay under any other law for the time being in force in respect of such profession, trade, calling or employment.

Explanation.--For the purposes of this section, a person on leave shall be deemed to be a person in employment within the area in which he was employed immediately before the commencement of leave,"

Section 4 provides that the tax payable by any person under the Adhiniyam shall be determined with reference to his total gross income during the previous year. Section 5 provides that the tax shall be levied at the rates specified in the Schedule and subsection (2) of this section provides that the tax so payable by any person shall not exceed two hundred and fifty rupees for any financial year. Sub-section (3) of this section provides that no person other than a Hindu undivided family shall be liable to pay the tax whose total gross income during the previous year does not exceed three thousand and five hundred rupees. The exemption in the case of a Hindu undivided family is up to six thousand rupees. Section 6 of the Adhiniyam provides that "the assessing authority, the appellate authority and the revising authority shall exercise such powers and perform such duties as may be conferred or imposed upon them by or under this Act". Section 7 provides for the filing of the returns by persons liable to pay the tax.

Section 8 deals with the assessment of the tax by the assessing authority and provides for the procedure for doing so. Section 15 provides for an appeal against an order passed by the assessing authority and Section 16 provides for a revision application against any order "made by the appellate or assessing authority under this Act". Section 20 confers on the assessing authority, the appellate authority or the revising authority the power to rectify any mistake apparent on the face of the record within a period not later than three years from the date of the assessment order sought to be rectified. Section 21 confers on the assessing authority, the appellate authority and the revising authority the

powers vesting in a Civil Court under the provisions of the CPC in respect of enforcing attendance of, and examining, any person on oath or affirmation, compelling the production of any document and passing such interim orders as may be necessary in the ends of justice. It also provides that any proceeding before any of those authorities under this Adhiniyam shall be deemed to be judicial proceeding within the meaning of Section 193 of the Indian Penal Code and also for the purposes of Section 196 of the said Code. Section 24 confers on the State Government the power to make rules.

3. The learned counsel appearing for the petitioners in these petitions have made several submissions before us which I am summarising below:--

1. The Adhiniyam is beyond the legislative competence of the U. P. Legislature as it imposes a tax on income which is the exclusive field of the Central Legislature.

2. The Adhiniyam does not show the purpose of the tax nor does it state that the tax has been imposed for the benefit of the State.

3. The Adhiniyam is discriminatory in nature inasmuch as it excludes the agriculturists and members of the Armed Forces from the liability to pay the tax, even though there is no rational basis for such exemption.

4. The Adhiniyam is confiscatory in its nature and provides the levy of tax not on income but on gross income.

5. The Adhiniyam contravenes the provisions of Articles 19(1)(f), 19(1)(g), 31, 246, 254, 265, 269, 270, 276 and 301 of the Constitution of India.

4. I proceed to consider the submissions seriatim.

5. It is contended on behalf of the petitioners that actually the tax is a tax on income, that is, an Income Tax and not a tax on professions, trades, callings and employments. It is also contended that the impugned tax would fall under Entry No. 82 of List I of the Seventh Schedule of the Constitution which reads:

"Taxes on income other than agricultural income."

The case of the petitioners, therefore is that it was the Central Legislature and not the U. P. Legislature which was competent to pass the Adhiniyam. The submission is that in the Adhiniyam, it is not the person who carries on trade, calling or profession, or one who holds an employment which is taxed but it is the income of such a person which is the subject-matter of taxation. Reliance is placed upon the provisions of Section 4 of the Act. The provisions of Section 5 read with the Schedule are also pointed out and it is contended that these provisions show that the tax is on the income and not on "trade or calling or profession or employment". The submission of the learned counsel for the petitioners is based upon a misconception of the provisions of Sections 4 and 5 as also of the Schedule.

Section 4 only provides that the tax payable shall be determined with reference

to his total gross income. The words used are "determined with reference to the total gross income" and not "on the total gross income". The use of the words "with reference to" clearly indicates that the total gross income is only a yardstick to measure the tax liability and is not the subject-matter of the tax. Section 5 of the Adhiniyam read with the Schedule also shows that it is not the gross income which is taxed. The Schedule gives the rate according to which the assessment is to be made. It would be noticed that Sub-section (2) of Section 5 provides that, in no case, an amount higher than Rs. 250 per year would be payable by a person, however high his income may be. From this it would follow that even if the gross total income is Rs. 12,000 or Rs. 25,000 or Rs. 50,000 or Rs. 1,00,000 or Rs. 50,00,000, the amount of tax would be the same, i.e., Rs. 250. It is, therefore, clear that the tax is not correlated to income. Income is only a yardstick to measure the tax liability. It would also be noticed that Sub-section (5) of Section 5 provides that--

"No tax shall be payable by a person whose total gross income during the previous year was utilised for charitable purposes."

This would show that if the entire income has been used for charitable purposes, there would be no tax liability under the Act. It is, however, well known that in a case of Income Tax, once the income accrues to a person, he is liable to pay the tax even though the entire income may have been used for charitable purposes. See *The Commissioner of Income Tax, Punjab Vs. Shri Thakur Das Bhargava, Advocate, Hissar*, . This circumstance again shows that the present tax is not an Income Tax.

6. I have already reproduced the preamble which categorically states that the impugned tax is one on profession, trades, callings and employments.

7. For the determination of the nature of a tax, the charging section is always considered to be very important. I have already reproduced that section earlier in this judgment. It is clearly provided therein that the tax is on trade, or profession or calling or on employment. The preamble and the charging section leave no scope for argument that it is a tax on income. Sections 4 and 5 read along with the schedule clearly indicate that the gross total income is itself not the subject-matter of tax but is only a yardstick to measure the tax liability. The most distinguishing feature of tax on income is that it is correlated to income. In the present case I have already pointed out that the maximum tax payable is Rs. 250 with the result that there is no correlation between the tax and the income.

8. Some argument was made on the basis of the definition of "person" and "gross total income" given in the Adhiniyam. I have already reproduced the clauses defining these two expressions. Learned counsel contends that the definitions of "person" and "gross total income" clearly show that apart from a Hindu undivided family, a firm or an association, the coparceners who constitute the Hindu undivided family, the partners of the firm and the members of the association are also liable to pay tax on the basis of gross total income. In my

judgment, the definitions of the expressions "person" and "gross total income" do not, in any manner, advance the case of the petitioners and are not relevant for the determination of the question as to whether or not the impugned tax is a tax on income. I have already said earlier that the total gross income up to the limit of Rs. 12,000 per year is only the yardstick to measure the tax liability and over that amount there is the fixed sum of Rs. 250 which is payable as tax irrespective of the gross total income.

9. I am, therefore satisfied that the present is not a tax on income but one on trades, callings, professions and employments.

10. I now proceed to deal with the connected submission made by learned counsel. It is contended that Entry 60 of List II of the Seventh Schedule of the Constitution provides for "taxes on professions, trades, callings and employments". The argument is that assuming that the case fell in Entry 60, the U.P. Legislature was permitted to impose tax either on professions or on trades or on callings or on employments but could not pass compendious measure to tax all. Reliance is placed upon the use of the word "taxes" occurring in the entry and not "tax" and it is contended that the Constituent Assembly intended that there would be separate taxes on professions, trades, callings and employment I am unable to agree.

If the entries in the II List of the Seventh Schedule are properly looked into, it would appear that the word used throughout is "taxes" and not "tax" as, for example, Entry 46 speaks of "taxes on agricultural income", Entry 47 of "duties in respect of succession to agricultural land", Entry 49 of "taxes on lands and buildings", Entry 50 of "taxes on mineral rights....", Entry 51 of "duties of excise..... Entry 53 of "taxes on the consumption or sale of electricity", Entry 54 of "taxes on the sale and purchase of goods....", Entry 55 of "taxes on advertisements" Entry 56 of "taxes on goods and passengers", Entry 57 of "taxes on vehicles", Entry 58 of "taxes on animals and boats", Entry 59 of "tolls", Entry 61 of "capitation taxes" and Entry 62 "taxes on luxuries...." It cannot be said that when the Constituent Assembly used the words "taxes on agricultural income", more than one kind of tax was intended. The same thing is in respect of other entries. In my opinion, there is no substance in this submission of the learned counsel, also. The result is that I overrule the first submission made before me.

11. Learned counsel contends that a statute imposing a tax on professions, trades, callings and employments must clearly state that it is for the benefit of a State, a municipality, etc., and, in any case, it must be clear from the provisions of the Act or from other material that the revenues to be received from that tax are to be utilised for the benefit of the State or the municipality, etc., i.e., are used for public purpose. The submission is based upon the provisions of Article 276 of the Constitution which reads:

"(1) Notwithstanding anything in Article 246, no law of the Legislature of a 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 employments 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 that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority, a tax on professions, trades, callings or employments, the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally, or in relation to any specified States, municipalities, boards or authorities."

Learned counsel laid great emphasis on the expression "for the benefit of State or a municipality, district board, local board or other authority" occurring in Clause (1) of Article 276. The submission is that the use of the word "benefit" shows that the levy should be imposed only for "public purpose". I am unable to agree. In my opinion, all that the expression "benefit of the State...." means is for the benefit of the revenues of a State, municipality or of a district board or a local board or local authority, that is to say, in order to augment the revenues of State or of a municipality or a District Board or a local Board or a local authority. I have no difficulty in holding that the word "benefit" is not used in the sense of "public purpose", as used in Article 31 of the Constitution and as alleged by the learned counsel for the petitioners.

No authority has been brought to our notice in which it has been held that the expression "for the benefit of a State...." in Article 276 means for "public purpose".

12. A tax on profession and trade is not a new tax. It was being levied by the municipalities in our country with the previous sanction of the local Government concerned as far back as the eighteenth century. (See comparative table of the income for the years 1912 and 1913 at pp. 674 and 676 of Indian Constitutional Documents, Vol. I, by P. Mukerjee). The position up to the time the Government of India Act of 1915-19 came into force, however, was that a tax on profession and trade could be imposed only for the benefit of the local authorities and not to benefit the exchequer of the Provincial Government. In the Devolution Rules framed under the Government of India Act, 1915-19, Item No. 9 was a tax on trades, professions and railings for the benefit or for the purposes of local bodies. Entry No. 9 of Schedule II of the Schedule Taxes Rules framed under the 1915-19 Act was "a tax on trades, professions and tunings". In the Government

of India Act, 1935, however, the restriction that the tax could be imposed only for the benefit of the local bodies was removed and Entry 46 of List II, which is reproduced below was very widely worded:--

"Taxes on professions, trades, callings and employments, subject, however, to the provisions of Section 142-A of this Act."

The present entry, as already pointed out earlier, is No. 80 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 or has been used. It is true that it has not been said in so many words in the Adhiniyam that the object of the tax is to augment the revenue of the State or to benefit the State, but the Adhiniyam does not state that it is imposed for the benefit of any one else. Besides, the very fact that the State Legislature has imposed the tax shows that it is for the benefit of the State exchequer.

Section 9 of the Adhiniyam provides for deduction of the tax at source, and subsection (3) of that section provides that the officer deducting any tax at source shall, in the prescribed manner, deposit the amount in a Government treasury within thirty days of such deduction and shall furnish, along with the returns, required to be filed under Sub-section (2) a receipt from such treasury in token of such deposit. In respect of the tax not deducted at source, Section 10 of the Adhiniyam provides that it shall be deposited in Government treasury. Section 12 of the Adhiniyam requires a person liable to pay tax to deposit the full amount in Government treasury and obtain a receipt for the same. These provisions show that the tax is to be deposited in a Government treasury. The circumstance that it is deposited in a Government treasury clearly shows that it is for the benefit of the State Government,

13. Unlike the law prevailing in several States of the United States of America where every law imposing a tax has distinctly to state the purpose and the object for which the tax would be applied, our Constitution does not require such a statement in the Act. The Due Process Clause to which reference has been made by Willis on Constitutional Law, p. 374 and in American Jurisprudence, Vol. 51, para 130, is not applicable to this country, and there is no constitutional statutory provision requiring a taxing measure to mention the object for which the revenues received from that tax would be utilised. Mr. Asif Ansari has placed reliance upon certain American cases. I am not considering them because those decisions are based on the special provisions that exist in the States from which they come.

14. It is trite that the basic difference between a tax and a fee is that whereas a tax is imposed in order to augment the general revenues of the State, a fee is levied only in order to render a particular service and, therefore, the amount

realised as fee must be expended in rendering that particular service. It is well settled that the power to tax and consequently the taxation itself would be presumed to be for public good and would not be subjected to any judicial review or scrutiny on that account See *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, and *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, .

15. At this stage I would like to refer to the statement of the objects and reasons as mentioned in the Bill which ultimately became the Adhiniyam. It reads:

"As the outlay of the 4th Five-Year Plan of the State is to be more than double that of the Third Plan, it has become necessary to explore all sources of revenue. The present situation resulting from Pakistan's aggression on the country has further added to the State's responsibility. It is accordingly considered necessary in the larger interest of the community to impose a tax on professions, trades, callings other than agricultural and employments in the State. Care has however, been taken to ensure that the burden of the tax on the lower income group remains within the reasonable limits."

The statement of objects and reasons can be looked into in order to find out the reasons which induced the Legislature to enact the statute. See *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, .

16. Under Article 266 of the Constitution of India "all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans, or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State". Clause (2) of this Article provides that "all other public moneys received by or on behalf of....the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be". Sub-clause (3) of this Article provides that "no moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution". It is thus clear that the revenues received from this tax would flow in the coffers of the State Government. Article 283(2) of the Constitution provides that the custody of the Consolidated Fund of a State and Contingency Fund of a State as also of any other money receipt and the disbursement of the same shall be regulated by law made by the State Legislature and until provision in that behalf is made (shall be regulated) by rules made by the Governor. That being the position, it is clear that the tax in question has been imposed for the benefit of the State of U. P. and that the Adhiniyam does not suffer from the legal defect that it is not categorically stated therein that the tax is being imposed for the benefit of the State Government. I, therefore, find no merits in the second submission of the learned counsel.

17. It is contended that the provisions of the Adhiniyam are discriminatory and

hit by Article 14 of the Constitution of India because exemption from tax has been granted to agriculturists and to the members of the Armed Forces in India.

18. It is not correct to say that any exemption has been granted to agriculturists. An agriculturist who carries on a trade, profession or calling in addition to agriculture would have to pay the tax. What has been done is that the tax has been imposed on trade, profession and calling except the occupation or the calling of agriculture. Therefore it is not correct to say that the agriculturists have been excluded from the operation of the Adhiniyam. The factual position is that the occupation of agriculture has been excluded from the expression "callings" occurring in Section 3 of the Adhiniyam. It is true that Sub-section (4) of Section 5 of the Adhiniyam provides that "no tax shall be payable by a member of the Armed Forces of India". There is thus a clear exemption given to the members of the Armed Forces.

19. The question for consideration is whether the circumstance that the occupation of agriculture has been excluded from the expression "callings" and the members of the Armed Forces of India have been exempted from the liability to pay the tax would render the provisions of the Adhiniyam unconstitutional.

20. It is well settled that the power to exempt is inherent in the power of taxation. Tax exemptions are normally made on the grounds of public policy. The submission of Mr. Asif Ausari is that from what has been stated in the legislature a large amount of money received as tax would be payable as loan or subsidy to persons carrying on agriculture and it is contended that there could be no rational basis for excluding agriculture from the expression "callings". It is also contended that there is no rational basis for exempting the members of the Armed Forces in India.

21. The burden of proving that the impugned Adhiniyam is discriminatory and is hit by Article 14 of the Constitution of India lies on the petitioners and the initial presumption is in favour of constitutionality. See *Rani Ratna Prova Devi Rani Saheba of Dhenkenal Vs. State of Orissa and Another*, . In the first place, there is not enough material on the record to show that, in fact, there exists any discrimination. Therefore, because of the vagueness of allegations and lack of sufficient particulars, it is not possible to hold that the provisions of the Adhiniyam are discriminatory. See *Pema Chibar alias Premabhai Chhibabhai Tangal Vs. Union of India and Others (UOI)*, , *Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others*, and *Ajoy Kumar Mukherjee Vs. Local Board of Barpeta*, ,

22. That agriculture is a class by itself cannot be a matter of any doubt. In the first place it cannot be comprehended in the expression "trade or profession or employment" and it is very doubtful if it can be comprehended in the expression "calling". In *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, it was said:

"The primary sense in which the term agriculture is understood is agar-field and

cultivation, i.e., the cultivation of the field and the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land .

They are operations to be performed after the produce sprouts from the land, e. g., weeding, digging of the soil around the growth, removal of undesirable under-growths and all operations which foster the growth and preserve the same not only from insects, pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market".

23. That being the nature of agricultural activity it appears to me that even if Section 3 had not so expressly provided the vocation of agriculture would be outside the scope of "profession, trade, calling and employment"". It is true that in Section 3 the words other than agriculture have been used, but, to my mind, that is by way of abundant caution and with a view to make express what was already implied. In no case, can the occupation of agriculture be included in the expression "trade or profession or employment". I have given my reasons for saying that normally it would not be comprehended even in the expression "calling. But, since there was the remote possibility of some confusion being caused in the sense of including it in the expression "calling" the legislature has made clear what was already implied by expressly excluding agriculture.

24. To my mind, the exclusion of agriculture, from the ambit of Section 3 of the Act does not, in any manner, amount to discrimination as it is a class by itself. If the legislature thought it proper to exclude that class it is a matter of policy over which the courts have no control. See *Oudh Sugar Mills Ltd., Hargaoon Vs. State of U.P. and Another*, . Even if it be assumed that from the amounts realised by way of this tax considerable sums would be paid to farmers and agriculturists by way of subsidy or loans it would not render the provisions of *adhiniyam* discriminatory. It is well known that the most serious problem before the country today is to increase the food production. In fact, the survival of the country depends upon whether or not she can solve the food crisis. Therefore, any subsidy or any loan paid to a farmer or an agriculturist with a view to help him to Increase the agricultural production of the country would not only be a justified act but would be a worthy act. In this connection I would like to point out the provisions of Article 48 of the Constitution which reads:

"The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."

That our country has still primitive and outmoded method of agriculture is well known. Therefore, any step taken to modernise agriculture and to increase food production in the country is fully justified. It may be giving a fillip to it by excluding agricultural income from taxation in the *Adhiniyam*.

25. It is not correct to say that the agriculturists, or farmers are being treated as a privileged class and are not being subjected to taxation. The case of agriculturists by the very nature of their occupation has got to be separately treated. They have been subjected to ceiling laws by the enactment of U. P. Ceilings on Land Holdings Act. They have to pay land revenue and a surcharge has been imposed on them by virtue of the provisions of Vrihat Jot Kar Adhiniyam, 1963.

26. Similarly the Armed Forces are also a separate Class from others. It is a matter of policy not to subject them to this Adhiniyam. Considerations for doing so may be many: one may be the hard duty the armed forces have to perform; the other may be disproportion between their salary and the risk involved in their duties; the third may be the call of the highest sacrifices from them including the laying down of their lives for the country. The statement of aims and objects shows that people were called upon to bear this tax burden inter alia, on the ground of financial strain caused by Pakistan's aggression. The armed forces having already borne the burden in the shape of laying down of their lives, limbs and security, during the Pakistani war the exemption in their favour was not only logical but irresistible and imperative.

27. Article 14 forbids class legislation but not reasonable classification for the purposes of legislation. It is well settled that there are two conditions for passing the test of permissible classification. One of them is that the classification must be founded on intelligible differentia which distinguish person or thing that are grouped together or others left out of the group and the second one is that the differentia must have a reasonable nexus to the object sought to be achieved by the statute in question.

28. The classification may be founded on geographical basis or according to the objects or occupations of life. So long as there is equality and uniformity within each group the law will not be condemned as discriminatory. In my judgment, the Adhiniyam satisfactorily complies with both the tests.

29. The power of the legislature to classify is of wide range and is flexible so that it can adjust its system of taxation,

30. In the present case the submission comes to this that inasmuch as the State has taxed something it ought to have taxed every thing, a submission which must necessarily be rejected. In tax matters "the State is allowed to pick and choose districts, objectives, persons, methods and even rates for taxation if it does so reasonably". (See Willis on Constitutional Law p. 587).

31. In East India Tobacco Co. Vs. State of Andhra Pradesh, it was observed:

"But in deciding whether a taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of

its selection the law operates unequally and that cannot be justified on the basis of any valid classification that it would be violative of Article 14".

It is not necessary to multiply authorities because the principles on which such questions are decided are well accepted. I have already said above that the two tests laid down by the courts of law have been complied with in the present case. I am, therefore, satisfied that the provisions of the Adhiniyam are not discriminatory and are not hit by Article 14 of the Constitution of India. There have been a very large number of cases where the Supreme Court rejected the submissions challenging the validity of an Act on the ground of discrimination. It is not necessary to reproduce all of those decisions here and only some may be cited as illustrative cases. In *East India Tobacco Co. Vs. State of Andhra Pradesh*, the alleged discrimination was between the two species of the same article i. e., tobacco and the law was held valid. In *Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI)*, , discrimination was alleged between cotton fabrics produced by co-operative society formed of owners of cotton power looms and cotton fabrics produced by the mills. The proposed excise duty was held to be valid. In *British India Corporation Ltd. Vs. Collector of Central Excise*, , the classification between big manufacturers of footwear and small manufacturers was upheld for the purposes of excise duty.

32. I find no merits in the submission that the Adhiniyam is confiscatory in its nature. The submission is based on a wrong assumption that the gross income of a per son is taxed. I have already shown earlier, in this judgment that the maximum amount of tax which a person can be charged however high his income may be is Rs. 250, The levy of such a small amount cannot be said to result in the provisions of the Act being confiscatory. I have already pointed out that the gross annual income is the yardstick to measure the tax liability and not the subject-matter of taxation, I am reproducing below the Schedule giving the rates of tax:

Where the annual gross income ?

Amount of Tax

Rs.

(1) exceeds Rs. 8,500 but does not exceed Rs. 4,000

...

... 12

(2) exceeds Rs. 4,000 but does not exceed Rs. 5,000

...

... 36

(8) exceeds Rs. 5,000 but does not exceed Rs. 6,000

?

... 60

(4) exceeds Rs. 6,000 but does not exceed Rs. 7,000

...

... 84

(5) exceeds Rs. 7,000 but does not exceed Rs. 8,000

..

... 103

(6) exceeds Rs. 8,000 but does not exceed Rs. 9,000

...

... 152

(7) exceeds Rs. 9,000 but does not exceed Rs. 10,000

...

... 156

(8) exceeds Rs. 10,000 but does not exceed Rs. 11,000

...

... 186

(9) exceeds Rs. 11,,000 but does not exceed Rs. 12,000

...

... 216

(10) exceeds Rs. 12,000 ...

...

... 280

It would appear that on a gross income of Rs. 3,500 to Rs. 4,000 all that is payable is a sum of Rs. 12/, and on a gross income of Rs. 4,000/- to Rs. 5,000/- a sum of Rs. 36/-. Similarly on a gross income of Rs. 5,000/- to Rs. 6,000/- the sum payable is Rs. 60/-, and on a gross income of Rs. 11,000/- to Rs. 12,000/- the sum payable is Rs. 216/-. The rates given in the Schedule are not high or excessive. Consequently, the argument that the Act is confiscatory in its nature must be rejected.

33. Submission No. V has been made only by Sri Bashir Ahmad who has appeared in Writ Petition No. 2598 of 1966. It is contended that the gross

income may not be a correct index of the actual income and in a case where the gross income is Rs. 15,000/- the net income may only be Rs. 3,000/- Assuming it is so, the amount of tax would still not exceed Rs. 250/-. There are no merits in the submission of Mr. Bashir Ahmad that in a case like this there is a prospect of the business of the assessee being completely ruined on account of heavy taxation. His argument that the Act is hit by Article 19 of the Constitution, therefore, cannot be accepted. Besides, the Adhiniyam was passed after the Emergency had been enforced with the result that the provisions of Article 19 stand suspended under the provisions of Article 358 of the Constitution. It is contended that inasmuch as there is no provision for making a reference to the High Court on a question of law and no appeal has been provided against the order of assessment in respect of escaped income the provisions of the Act are hit by Article 19(1)(f) and (g) as also Article 31 of the Constitution of India. I am unable to agree as I see no application either of Article 19 or Article 31 to the case before us. Mr. Bashir Ahmad also contended that it is not quite clear whether the impugned tax would fall under Entry 82 of List I or Entry 60 of List II. He further submitted that the Adhiniyam conflicts with the Indian Income Tax Act and for that reason by virtue of the provisions of Article 254 of the Constitution the Income Tax Act would supersede the Adhiniyam. The submission is based upon a wrong assumption. I have already stated earlier that the impugned tax is not a tax on income and that it clearly falls under Entry 60 of List 2. It is next contended that the present tax being one on income it should be collected by the Union of India under the provisions of Article 270 of the Constitution and inasmuch as it has to be collected by the State, the Adhiniyam is void. I have already said above that it is fallacious to consider the tax in question to be a tax on income. There is, therefore, no application of Article 270 of the Constitution. Mr. Bashir Ahmad also contended that the present Act is hit by Article 269(1)(f) and (g) of the Constitution. I find no substance in the submission. Article 269 deals with taxes and duties enumerated in Clauses (a) to (g) of that provision and the impugned tax does not fall in any one of them. I have not been able to appreciate the submission of Mr. Bashir Ahmad that the Act is hit by Article 301 of the Constitution. Article 301 reads:--

"Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free."

What is intended by the expression "shall be free" is not that no tax shall be payable on trade, professions, callings, and employments which is expressly provided for by Article 276 of the Constitution but that an Indian will be free to carry on trade, commerce and intercourse in any part of the country. I find no substance in any of these submissions of Sri Bashir Ahmad.

34. In the end it was also contended on behalf of Sri Anand in Writ Petition No. 3044 of 1966 that the salary paid to him comes out of the Consolidated Funds of India, and goes straight to his Bank and inasmuch as he can draw it in any part of India including a place outside U. F. he is not liable to pay the tax. The tax is

not on salary but on employment and so long as Sri Anand is employed in U. P. I do not see how he can escape the tax liability. No other submission has been made before me.

35. As I find no merits in any of the submissions made before me I dismiss the writ petitions but direct the parties to bear their own costs.

S.C. Manchanda, J.

36. I agree.

M.H. Beg, J.

37. I have had the benefit of reading the judgment of my learned brother Jagdish Sahai. I respectfully concur with the conclusions reached there. I may, however, deal with some of the questions raised, relating to the validity of the Uttar Pradesh Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam, 1965, (hereinafter referred to as the Adhiniyam), as they appeared to me. Questions raised in the course of arguments before us may be divided into three types. Firstly, there were questions about the nature of what are described as taxes on "professions, trades, callings and employments" in Entry No. 60, List II of the Seventh Schedule to our Constitution. Secondly there were questions relating to the presence or absence of the objects or purposes of the Adhiniyam and the ensuing legal consequences. Thirdly, there were questions arising from particular provisions of the Adhiniyam which could, apart from the objects of the Adhiniyam, affect the validity of the Adhiniyam.

38. With regard to the nature of the taxes on professions, trades, callings and employments, the main submission on behalf of the petitioners was that the Adhiniyam, having imposed what was really Income Tax and not a tax on trades, professions, and employments was beyond the legislative competence of the U. P. State Legislature. Reliance was placed on District Board of Farrukhabad Vs. Prag Dutt and Others, , where Malik, C. J., observed:

"A tax on professions, trades, callings or employments may not be a graduated tax according to the income earned from the profession, trade, calling or employment. In that case it would be more in the nature of a licensing fee. It may again be a graduated tax and if it is on the basis of income derived from professions, trades, callings or employments and is payable only if there is income, a serious question for consideration may arise whether it is anything other than income tax".

In this very case it was pointed out: "When a tax is a graduated tax calculated on the basis of so many pies per rupee of the income made from business and property, then the line of demarcation between a tax on "income" and a tax on "circumstances" becomes narrow and they almost converge. "By applying what is called the pith and substance rule, Malik, C. J. concluded that "the fundamental difference between a tax on "income" and a tax on "circumstances and property" is that Income Tax can only be levied if there is income and if

there is no income, no tax is payable but in the case of Circumstances and Property Tax, where a man's status has to be determined his total business turnover may be considered for purposes of taxation, though he may not have earned any taxable income. "That was a case of tax on circumstances and property imposed under the U. P. District Boards Act, but such a tax was held to be a composite tax including within its ambit taxes on professions, trades, and employments.

39. In *Western U.P. Electric Power and Supply Company Ltd. Vs. Town Area and Others*, , which also related to a tax on circumstances and property, it was observed by Srivastava, J.:

"An obvious distinction exists between a tax on trades, callings or professions and a tax on income arising from a trade, calling or profession. If a tax is imposed on a trade, calling or profession it will have to be paid by any person practising that trade, calling or profession, whether he derives any income from it or not.

It will be a tax on the trade, calling or profession itself. Such a tax may certainly be called a tax in respect of professions, trades, or callings but it cannot by any means be said that it relates to a tax on income. In respect of such a tax, no question can arise about its being invalid on the ground that the State Government had no authority to impose it."

40. We may also glance at the decision of the other High Courts on this subject. In AIR 1949 190 (Nagpur) it was held by the Nagpur High Court that a tax imposed by a District Council at the rate of three pies per "Khandi" on persons carrying on the trade of husking, milling or grinding of grains was a tax on profession, trade, calling, or employment. The Madhya Bharat High Court in *Sri Krishna, v. Ujjain Municipality*, AIR 1953 M P 145, held that a tax on cinema performances was within the purview of Article 276 of the Constitution and subject to the limit imposed by Article 276(2) of the Constitution. A Division Bench of the Saurashtra High Court, however, criticised the view taken in *Sri Krishna's* case AIR 1953 MP 145 (supra) by the Madhya Bharat High Court on the ground that it ignored the specific Entry No. 62 of List II of Sch. VII relating to taxes on entertainments. The Saurashtra High Court observed in *K. C. Shah v. Pali-tana Municipality*, AIR 1955 Sau 90.

"The true test for determining whether a particular tax is a tax on "calling" referred to in Article 276 of the tax. on "entertainments" under Item 62 of the State list is to ascertain the incidence of the tax, If the incidence falls on the person because he is engaged in the business of providing the entertainment for profit, it is a tax on his calling; but if the incidence of the tax falls on the particular entertainment irrespective of whether the person providing the entertainment follows that calling or not, then it is a tax on the entertainment and falls within Item No. 62 of the State list and as such will not be hit by Article 276. If for instance the tax is to be paid on a cinema show irrespective of

whether it is given by a professional exhibitor or by one following a different calling, e.g. by a charitable society to raise funds for a charity, it is obvious that the tax can only be regarded as a tax on entertainment and not a tax on calling, for what is taxed is not the calling of the person providing the entertainment but the entertainment itself".

41. A Division Bench of the Bombay High Court, consisting of Shah and Gokhale, JJ. in the *The Municipality of Chopda Vs. Motilal Manekchand and Another*, held that the concept of a "trade" found in Article 276 of our Constitution covered the case of a manager of a pressing factory whose liability to pay tax was computed by reference to the number of bales pressed by the manager within the limits of the taxing municipality. It was observed there:

"It is evident that the connotation of "trade" is not limited to an occupation which primarily concerns itself with sale and purchase of goods. Pursuit of a skilled employment with a view to earn profit, such employment not being in the nature of a learned profession or agriculture, must be regarded as engaging in "trade" within the meaning of Article 276 of the Constitution. A skilled occupation which involves the application of manufacturing processes to a commodity submitted to the person carrying on the occupation must, therefore, be regarded as trade. Evidently for remuneration the plaintiffs undertake by mechanical process to press cotton into bales and the tax levied from them is in respect of the pursuit of that activity".

In *T.K. Abraham and Others Vs. State of Travancore-Cochin*, a Full Bench of the Kerala High Court held:

"The "base" of a tax -- the object or objects to which the tax applies, such as the "sales value" of tangible property or the "net income" of an individual provides the chief element of distinction between the various tax forms obtaining in modern communities. The base of a profession tax, that is, of the taxes under Entry 60 of the State List, is either the occupation itself or the income derived therefrom. That is why the Taxation Enquiry Commission (1953-1954) says:

"Basic to the levy of the profession tax is a classification of the "assessee" according to profession or income or both."

It is because a profession tax may savour of a levy on income that Clause (1) of Article 276 takes care to say:

"Notwithstanding anything in Article 246, no law of the legislature of a 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 employments shall be invalid on the ground that it relates to a tax on income."

The base, as we understand it, of the levy impugned is neither an occupation nor the income derived therefrom, but the commodity concerned, namely, the tobacco stocked by the licensee. In other words, the tax with which we are

concerned is a tax not on an occupation or its income but a tax on a commodity".

42. The Madhya Pradesh High Court in *Mohanlal Hargovind Vs. Gram Panchayat and Others*, pointed out that "a tax on trade, calling and profession must have as its base either the occupation itself or the income derived therefrom and that the classification of assesseees in the levy of a tax on trade, calling, and profession is according to the profession or income or both." It held a tax graduated according to the number of biris manufactured to be an excise duty outside the purview of Article 276 of the Constitution, A Division Bench of the Patna High Court in *Calcutta Chemical Co. Ltd. Vs. Bhagalpur Municipality and Another*, held a tax on joint stock companies transacting business graduated according to the capital value of the shares to be covered by Article 276 of the Constitution. It appeared that in that case a licence was also issued to the tax-paying company.

43. Recently, in *Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon*, it was observed by Mudholkar, J., expressing the majority opinion.

"Taxes on professions, trades, callings and employments are taxes on income and are thus outside the provincial and now State lists and belong exclusively to Parliament and before that to the Central Legislature. Yet under a large number of laws enacted before the Government of India Act, 1935, came into force, power was conferred on local Government and local authorities to impose taxes on such activities. This was obviously in conflict with Section 100 of the Government of India Act. When this was realised Section 142-A was enacted by the British Parliament which saved the power conferred by pre-existing laws but limited the amount payable to Rs. 50/-after 31st March, 1939. A saving was made, however, of pre-existing laws subject to certain conditions with which we are not concerned. The provisions of this section have been substantially reproduced in Article 276 of the Constitution with the modification that the upper limit of such tax payable per annum would be Rs. 250/-instead of Rs. 50/-".

Therefore, it appears that, although the Supreme Court held that taxes on professions, callings, and employments, may be viewed as taxes on income, yet such taxes were immune from attack if the permissible limits imposed by Article 276(2) of the Constitution were not transgressed by the State Legislature. The above mentioned decision of the Supreme Court seems to have taken the wind out of the sails of the contention that a tax, if it is substantially one on income, is invalid on the ground that it is not contemplated by Entry 60 of List II of the Seventh Schedule. Hence, it does not appear necessary to embark upon any detailed discussion about the origins and nature of taxes on professions, trades, callings and employments.

44. It is possible that if some research was carried out into the origins of these taxes they may be shown to be related in some way to the impositions made by local satraps and landlords under a feudal set up upon the "reyaya" living on their Abadi lands and carrying on what were considered lonely but lucrative callings. Such, for example, was "Kargahi" (See Bilgramis' Commentary on the

U. P. Tenancy Act, 1939, 3rd edition, p. 656) imposed on weavers. These exactions were sought to be connected by zamindars to the use of their lands, but, as we know, they were declared illegal by State legislation, when its administrative machinery developed, because such levies were considered to be in the nature of taxes which were within the exclusive province and competence of governmental agencies, including the local government authorities, to make,

45. Originally, such taxes or impositions may have resembled licensing fee and may have had an element of quid pro quo in the shape of some protection given or service rendered or amenity provided in return by the taxing authority. It was pointed out by Gajendragadkar J. in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, that compulsion to pay attaches to both licence fee and taxes, and that there is a concept of a "quid pro quo" between the tax payer and the public authority lying behind a tax also, but the difference is that taxes are not earmarked for particular purposes as the licence fee is. and there is no need to show a reasonable co-relationship between the collections of tax and the expenditure incurred on some purpose as there is in the case of licence fee.

46. No tax similarly described in the Constitution of any modern country has been brought to our notice. Taxes on professions, trades, callings and employments seem to belong to a period when the modern system of an income tax had not been developed and adopted. These taxes appear to be indigenous in origin and growth. Looking back, all we can say with certainty is that these taxes were a well recognised class of taxes imposed by local authorities when the Government of India Act, 1919, was passed. A table, given in P. Mukerji's *Indian Constitutional Documents (1600-1918)* at p. 674, shows that these taxes constituted a regular source of income of local authorities all over India in 1912. These taxes are mentioned in the Government of India Acts of 1919 and 1935. We also know that the British Parliament had to sanction, by introducing Section 142-A in the Government of India Act of 1935, the levy of such taxes, within the prescribed limits, by Provincial Legislatures, because it was realised that they would be substantially taxes on income, and, therefore, fall within the competence of the Central Legislature exclusively.

47. The result of this survey is that we cannot deny to a tax the character of a tax "in respect of professions, trades, callings and employments" merely because its incidence is on income. The object and effect of all taxation is to bring money into the coffers of the taxing authorities. Its incidents will naturally be on the incomes of the assesseees where the assesseees have incomes. The income could also be a very convenient yardstick for such a tax. Its incidence on income will not determine the legal character of a tax otherwise covered by Article 276. In order to establish the character of such a tax two tests may be applied: one, by determining positively whether the reason for the incidence of a tax upon a person or his resources or income is the possession by him of a profession, trade, calling, or employment; and, another, negatively, by ascertaining whether

the subject-matter or object or reason for the tax is not more properly referable to some other entry in the legislative lists of the Seventh Schedule apart from the entry for Income Tax. An examination of the relevant provisions of Adhiniyam, set out in the judgment of my learned brother Jagdish Sahai, J., shows that the tax levied under it satisfies both these tests. Therefore, I am unable to accept the argument that the tax contemplated by the Adhiniyam does not fall within Entry No. 60 of List II of the Seventh Schedule.

48. A variety of arguments were advanced about the presence or absence of objects or purposes of the Adhiniyam and its legal effects. The argument that the Adhiniyam has no object or purpose apparent from it, which was seriously pressed by Mr. Asif Ansari, is not only devoid of substance but runs counter to other arguments advanced by the learned counsel about the purpose of the Adhiniyam. As the argument was elaborated, it was found that what the learned counsel meant was that the purpose and object of a taxing measure must be specified and so described in the enactment itself. The authorities placed before us by Mr. Asif Ansari related to the constitutional requirements of taxing enactments of the Legislatures of the American States. I do not think it is possible to use them unless such a requirement could be found in our Constitution.

49. Learned counsel for the petitioners contended that words used in Article 276 of the Constitution necessarily meant that the object or purpose of a taxing measure covered by it must be specified in the enactment itself or else it would not be possible to hold that the enactment passes the tests required by Article 276 of the Constitution. It was contended that Article 276 of the Constitution is a special provision in this respect: A comparison was sought to be made with the exercise of the State's power of Eminent Domain, dealt with in Article 31 of the Constitution, which has to pass the test of a public purpose. It was urged that a taxing measure, to be covered by the exception made in the special case of certain kinds of "tax on income" permitted by Article 276, must, similarly, be shown to be "for the benefit of the State or of a municipality, district board, local board or other local authority". In other words, Article 276 of the Constitution laid down a positive requirement of a taxing measure falling under it, and it was submitted that the fulfilment of this requirement was a condition precedent to the validity of an enactment covered by Article 276. It was contended that there would be no means of judging whether the requirement was fulfilled unless the enactment itself stated what the benefit was or at least mentioned that the enactment was for the benefit of the State.

50. The comparison between Arts. 276 and 31 of the Constitution is not apt. Article 276 is an empowering provision which authorises a species of taxation. Article 31 occurs in Part III relating to fundamental rights and contains limitations on the powers of the State and is meant to safeguard basic rights of citizens against deprivation of property without complying with certain requirements. Moreover, Article 31(5) specifically mentions that Article 31(2)

permitting acquisition of property only for a public purpose will not affect the provisions of any law made by a State "for the purpose of imposing or levying any tax". No authority was shown to us for the proposition that the public purpose must itself be expressly stated and specified in any enactment seeking to deprive citizens of their property and that it cannot be gathered from the provisions of the statute itself. It also seems impossible to contend that benefit of the State or a local Government body could not constitute a public purpose. It must be presumed that taxes collected for a State or local authority are for its benefit. Such benefit can only be a public and not a private purpose. This is inherent in the very nature and definition of "taxation" viewed as a process authorised by law. Aiyar's Law Lexicon correctly states:

"The terms "tax" and "taxes" have been defined as a rate or sum of money assessed on the person or property of a citizen by Government for the use of the nation or State; burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes, and the enforced proportional contribution of persons and property levied by authority of the State for the support of Government and for all public needs."

The very first definition of the term "taxation" given in "Words and Phrases" (West Publishing Co. publication), Vol. 41, is : "absolute conversion of private property to public use".

51. Mr. Jagdish Swarup, appearing for one of the petitioners, contended that the term "benefit of the State" had a narrower connotation than "public purposes". Even if this contention were accepted, it will only mean that the imposition contemplated by Article 276 of the Constitution has to satisfy a narrower test to be a tax under it and that test is satisfied here. After examining the possible implication of the word for the benefit of the State..... or other local authority" used in Article 276 of the Constitution, it is difficult to come to any conclusion except that these words were used only to describe the taxing process adopted by the various authorities covered by Article 276 of the Constitution. The words could not have been used to impose the need to specify, in the enactment itself, some special benefit to the taxing organs. As already indicated, the concept of tax itself necessarily implies benefit to the taxing public organs. It is not possible to read into these words any restriction upon taxing power by requiring the specific mention of the benefit to the taxing authority.

52. It was submitted that the purposes of the tax, as found in the preamble, were illusory. It was contended that the war with Pakistan was over long ago and that the Fourth Five-Year Plan for which money was sought to be raised, was intended for the benefit of particular classes of persons who did not need such help. Petitioners' arguments revolving round the preamble assumed that a statement of the context in which the need to augment the revenue of the State arose constituted a statement of the purpose of the Adhiniyam. An examination of the preamble reveals that it only sets out the reasons why the need to tap new sources of taxation arose, but the purpose of the Adhiniyam, as stated in

preamble, was to increase the revenues of the State. If, as already indicated, the benefit to the State from taxation is itself an object inherent in the very concept of a tax, an explanation of the context in which some tax was required could not constitute the object. Even if one were to assume that the reasons for which new source of taxation were to be tapped could be viewed as objects of the tax, one can find nothing in those objects to invalidate the tax. The discharge of financial obligations resulting from the waging of a war with Pakistan in the past or the contemplated expenditure to be incurred on socialistic planning by a welfare State are not illegal activities, for which money could not be raised by taxation.

53. Our attention was drawn to the actual proposals contained in the Fourth Five-Year Plan which, according to the affidavits filed on behalf of the petitioners, provide for loans to individuals carrying on agricultural activities. It was urged that this meant that money was being raised for the private benefit of individuals of a particular class and not for the benefit of the State or the public at large. This submission overlooks that disbursements of money by the State are bound to benefit some individuals. Individuals are also members of the public. Moreover, we are not concerned in the cases before us with the soundness of the Fourth Five-Year Plan. There is no law which prohibits making of plans for the development of agriculture. Indeed, it is considered the foremost duty of modern socialistic States to formulate plans and no one can deny the primary need to develop agriculture in these days of acute food shortage. These questions, however, would not directly arise in the case once it is held that taxation need have no purpose beyond that of increasing revenues of the State. If the legal position is that a tax, unlike a licence fee, is not earmarked for any particular purpose but its proceeds must go into what is known as the Consolidated Fund, the statement of needs or of the occasion for the tax in the preamble to a taxing measure does not convert that need or occasion into what can be legally looked upon as the purpose of the tax.

54. In an attempt to show that the Adhiniyam was a colourable piece of legislation and a "fraud upon the Constitution", a reference was made to report of the Financial Commission submitted in 1961 where it was pointed out that expenditure on plans by States needed better control and rationalisation and that States tended to develop "an allergy to tap resources in the rural sector". It was submitted that the Adhiniyam was motivated by a desire to favour the rural population as compared with the urban population so that the Government which brought in the measure may not lose votes. Such vague and general assertions are more in keeping with political polemics and cannot provide grounds for holding that the Adhiniyam was designed deliberately to injure any particular classes or sections and to benefit other particular classes or sections of the population.

55. We are then asked to consider the provisions of the Adhiniyam itself in order to apply the well-recognised mode of judging whether the provisions of an enactment are hit by Article 14 of the Constitution after ascertaining the object

of an enactment. From amongst the decisions cited on this mode of applying Article 14, it is sufficient to quote from *Kangshari Halidar and Another Vs. The State of West Bengal*, where Gajendragadkar, J., observed (at p. 464): "In considering the validity of the impugned statute on the ground that it violates Article 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be Considered. Having thus ascertained the policy and the object of the Act, the Court should apply the dual test in examining its validity: Is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied, the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the Judicial enquiry. If either of the two tests is not satisfied the statute must be struck down as violative of Article 14."

56. It was urged that even if the prima facie object of taxing statute is to augment the revenue of the State, as it is in the present case, the classification found in the provisions of the Adhiniyam is not such as to satisfy or serve the object but frustrates it largely by exempting from the ambit of the Adhiniyam such a wide and relatively better-off section of the population as that of persons who earn their livelihood by the pursuit of the agricultural activities. It was also urged that the exemption of the members or the Armed Forces of India could not be justified if the test mentioned above were applied. Speaking for myself, the contentions appeared to be serious enough to raise doubts whether the Adhiniyam is not hit by Article 14 of the Constitution, but the consideration which has prevailed with me was that mere doubts are not enough to justify the declaration of a statute as void in view of the presumption of constitutionality and the strong terms in which such a presumption has been repeatedly affirmed by Courts.

57. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the Supreme Court summarised the propositions which may be deduced from the decisions of the Supreme Court. It said:

"The decisions of this Court further establish--

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the 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;

(c) that It must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems

made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face or the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption or constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection or the laws."

58. A consideration to which I attach importance is that Entry No. 46 of List II of the Seventh Schedule enables the Legislature to impose taxes on agricultural income without the limitations to which taxes on professions, trades, callings and employments falling in Entry No. 60 are subjected. It appears to me that agricultural income was referable to a separate entry and it has been the subject-matter of taxation under separate enactments of the State of Uttar Pradesh dealing with it. In fiscal matters, it must be left to the discretion of the taxing authorities, whether they would tax all kinds of income by one uniform enactment or by several enactments which deal with separate types of income from different sources. In *East India Tobacco Co. Vs. State of Andhra Pradesh*, , it was observed;

"It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down recently by this Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects if. will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when, within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. The following statement of the law in *Willis on "Constitutional Law"*, p. 587, would correctly represent the position with reference to taxing statutes under our Constitution:--"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates, for taxation if it does so

reasonably. The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

In *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, , applying the test of constitutionality to taxing laws, Gajendragadkar, J., observed:

"It is not for the Courts to consider whether some other object should have been taxed or whether a different rate should have been prescribed for a tax."

In *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , it was observed:

"..... the Legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate; vide *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, . It would be idle to contend that a State must tax everything in order to tax something. In tax matters, "the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably". "

59. Mr. Shanti Bhushan, appearing for the State, directed our attention to Uttar Pradesh *Malguzari* *tatha* *Lagan* *par* *Apatik Adhibhar Adhiniyam* 22 of 1965 which was notified on the same day as the *Adhiniyam* with which we are concerned. He contended that other means of taxation of agricultural income had been, in conformity with the past practice, adopted by the Uttar Pradesh State Legislature. After going through the provisions of the *Malguzari Adhiniyam* it is not at all possible to conclude that what is being taxed is not primarily land in the shape of land revenue but agricultural income. The *Malguzari* *tatha* *Lagan Adhiniyam* (U. P. Act 22 of 1965) purports "to provide for the levy of emergency surcharge on land revenue and rent payable or deemed to be payable by the landholders". In any case, it is not enough to take into account the actual burdens imposed upon persons carrying on agricultural activities at a particular time when examining the question whether there was justification for not taxing the agricultural activities under the particular *Adhiniyam* which we have to consider. It is enough, if, as has been shown, agricultural income, as a matter of law and practice, can be and has been and is taxed and dealt with separately by separate enactments, and under a different legislative entry. Therefore, apart from the consideration that there may be broader and other justifiable grounds for a preferential treatment at this time for those carrying on agricultural activities, the exclusion of agricultural income from the *Adhiniyam* seems justifiable by a reference to separate Entries 46 and 60 and constitutional practice. Such distinction or classification is reasonably related to the basic purpose of taxation which is the augmentation of the revenue of the State. It only involves the choice of suitable and differing modes of taxation which may be adopted for taxing income from different sources or activities. The general question whether the urban sections of the population of Uttar Pradesh are inequitably taxed as compared with the rural sections at present would take us for a field. It will necessitate a consideration of the whole fiscal policy of the

State of U. P. in the light of all the taxation laws of U. P. and of a very large number of facts which are not before us at all. Matters of taxation policy in general, in the light of principles such as those found in Sir Hugh Dalton's "Public Finance" or Sir Josiah Stamp's "Fundamental Principles of Taxation", are meant to be examined and discussed elsewhere. We can only consider specific legal questions affecting legal rights and obligations arising upon the materials before us.

60. It also appears that the exemption given to the Army personnel at a time when the sacrifices made by the Army were fresh in our minds is also not unjustifiable. It is for the Legislature to judge whether it is necessary to exempt the Army personnel on grounds similar to those on which charitable activities are exempted. The broader object of the welfare of the country and the nation as a whole could justify such exemptions. In such cases it may be necessary to look beyond any narrower purpose to the wider objects and aspects of national welfare which underlie all healthy legislation. These exemptions may be justified on the ground that they are reasonably correlated to these wide objects.

61. Coming now to the last set of questions raised, the first of these was that Article 270 of the Constitution relating to taxes on income would be applicable in the present case and bar "the levy and collection" of the tax by any authority except the Government of India. It is evident by reading the Article as a whole, that this Article applies only to those taxes in which a question of distribution of the proceeds of the tax between the Union and the States could arise. It is also clear that the than "tax on income" used here does not cover taxes which may only amount to taxes on income although their true legal character is different. In the present case we are concerned with a tax whose legal character is that of a tax on professions, trades, callings and employments. Even if the tax before us could be spoken of as having a double character, it is apparent that Article 270 of the Constitution was not dealing with taxes of a dual character. It is confined, in my opinion, to what are exclusively taxes on income.

62. The second question which may be dealt with, among the last set of questions under consideration is the effect of Section 2(12) of the Adhiniyam which makes the gross income the basis of commuting the tax. It was contended that this may amount to taxing individuals who had no "income" whatsoever in the sense in which the term "income" has been used under the law relating to Income Tax. A person having no net income may still be taxed if he has a profession, calling, or employment. If the legal basis of a tax is not income, and gross income is only a yardstick for determining the quantity of the tax, I am unable to hold, on the ground that hardship may conceivably arise in hypothetical cases, that the Adhiniyam itself is illegal and void for this reason. If the basis or object of the tax is the possession of a profession, calling or employment, I do not see any legal obstacle in taxing a person who has the taxable object even though he may have no income.

63. A third question arises out of the charging Section 3 of the Adhiniyam. It is

pointed out that a person who derives income from any agricultural operation as his calling in life may have, in addition, other more lucrative professions and callings, but he would because of what may be spoken of as a "calling" consisting of an agricultural activity, escape liability to pay the tax. I do not think that such a forced interpretation is correct. The more natural interpretation of Section 3 is that every one who carries on a trade or has a profession or calling or employment may be taxed upon the basis of these, but if a person had a "calling" which consists of carrying on an agricultural activity, the agricultural "calling" will not be liable to be taxed. This appears to be the normal interpretation even on the assumption that agricultural activities can be spoken of as "callings" at all.

Lastly, there is a question arising out of the definition of the term "person" given in Section 2(6) of the Adhiniyam, which provides:

" "person" includes a Hindu undivided family, company, an incorporated body, a firm, a society or any other association of persons."

It is urged that this would mean that individuals who belong to joint Hindu families and other associations will be taxed in two capacities. This contention is based upon an erroneous assumption. An individual and a "person" composed of a collection of individuals are separate legal entities. This question has been raised only in Writ Petn. No. 2600 of 1966 filed by Vijai Narain Kapoor. This petition only sets out hypothetical hard cases. It does not state how the petitioner himself is an aggrieved person even if the definition of "person" given in Section 2 (6) of the Act may create a situation in which an individual may conceivably be able to complain that he is being discriminated against unjustifiably as compared with persons who are not members of Hindu undivided families or of associations. I, therefore, do not think it necessary to decide this point which could only affect the validity of the definition of the term "person" given in Section 2 (6) of the Adhiniyam. Even if that part of the Adhiniyam could be held to be invalid, it would not affect the validity of the other parts. I prefer to leave this point expressly open. In the cases before us we are concerned only with the validity of the taxing part of the Adhiniyam as it affects the petitioners before us.

64. In the result, I agree with my learned brother Jagdish Sahai, J., that the petitioners are liable to pay the taxes imposed under the Adhiniyam which are not invalid. The writ petitions before us are dismissed, but, in the circumstances of the case, parties will bear their own costs.