

**(1978) 10 BOM CK 0007**

**In the Bombay High Court**

**Case No :** Special Civil Application No. 2627, 2650 of 1976 and 770 of 1978

Vasant Abaji Mandke

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision :** 04-10-1978

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 141  
Constitution of India, 1950 — Article 14, 19, 226, 276, 31  
Government of India Act, 1935 — Section 142, 142A

**Citation :** (1979) 81 BOMLR 542

**Hon'ble Judges :** S.K. Desai, J;Pendse, J;Deshpande, J

**Bench :** Full Bench

## Judgement

Deshpande, J.—Petitioners in this group of petitions are all legal practitioners two of them having enrolled as such practitioners after retirement from service. u/s 3 of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (hereafter referred to as "The Act") read with entry 2 of the Schedule I thereof, the petitioners are liable to pay the profession tax upto Rs. 250 per annum. The petitioners challenge the constitutional validity of the above Schedule I of the Act.

2. The main charging Section 3 of the Act reads as follows:

(1) Subject to the provisions of article 276 of the Constitution of India and of this Act, there shall be levied and collected a tax on professions, trades, callings and employments for the benefit of the State.

(2) Every person engaged in any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of Schedule 1 shall be liable to pay to the State Government the tax at the rate mentioned against the class of such persons in the third column of the said Schedule:

Provided that, the tax so payable in respect of any one person shall not exceed

two hundred and fifty rupees in any year:

Provided further that entry 20 in Schedule I shall apply only to such classes of persons as may be specified by the State Government by notification in the Official Gazette, from time to time.

3. Entry 2 of the Schedule I, so far as relevant to legal practitioners, reads as follows:

(a) Legal practitioners including solicitors and notaries public; Where the standing in the profession of any of the persons mentioned above-

(A) in any Corporation area is- (i) less than two years Nil (ii) two years or more but less than five years Rs. 150 per annum. (iii) five years or more Rs. 250 per annum. (B) in any other area in the State is- (i) less than two years Nil (ii) two years or more, but less than five years Rs. 50 per annum. (iii) five years or more, but less than ten years Rs. 150 per annum. (iv) ten years or more Rs. 250 per annum.

4. The legal practitioners are thus firstly classified by reference to whether they practice within Corporation area as defined u/s 2(b) of the Act or beyond such areas. They are then classified by reference to their standing, i.e., years of practice completed by them, for exemption from the tax, or for fixing the rate at which the tax is payable by them. The rate of tax so fixed does not take into account their earnings from the profession or their paying capacity. It is well-known that actual earnings of a practitioner and his overall standing depends on variety of factors. Income of a few lawyers in Corporation areas can be far lower than those practising in non-Corporation areas. A few junior lawyers earn at the bar even far more than their seniors. With old age capacity to work diminishes though experience gained itself proves to be an asset. Many practitioners continue in the profession in the just hope of some chance though they do not depend on the income thereof, because, of their other sources of income. Some even find it convenient to manage their properties better by continuing in the profession than by leaving it.

5. On the basis of these factual aspects, Mr. H. G. Vaishnav, the learned advocate appearing for one of the petitioners, contends that any tax imposed in disregard of the earnings and paying capacity of the practitioners is irrational, unreasonable and arbitrary. Mr. M.V. Paranjape, the learned advocate appearing for another petitioner and Mr. D.R. Dhanuka, learned advocate appearing for the Bar Council, of which he is the Chairman, contend that the scheme under Schedule I of the Act is violative of Article 14 of the Constitution - (1) firstly because it proceeds to classify and sub-classify persons liable to tax not only in disregard of their earning and paying capacity, but also by reference to irrelevant factors having no nexus with the object thereof, (2) secondly, because it seeks to impose the tax at a flat rate on large and small income earners, treating them on equal basis and (3) thirdly, because it discriminates between the assesseees and assesseees by relating the tax, either to the income or to the turn over of the few,

while denying the same basis to the practitioners like the petitioners.

6. Mr. Dhanuka also contends that such an irrational and arbitrary Impost operates as unreasonable restriction on the freedom of citizens to carry on their profession, guaranteed under Article 19 (1)(f) of the Constitution, Mr. K. H. Kulkarni, the learned advocate appearing for yet another group of petitioners, also adopts these very arguments. Mr. M. Y. Joshi, the learned advocate representing the Poona Bar, who was permitted to intervene, contends that such an irrational impost obstructs the course of justice guaranteed to the citizens under the preamble to the Constitution.

7. Mr. C. J. Sawant, the learned Additional Government Pleader, appearing for the State, does not dispute, and rightly, that taxation enactment has to stand the test of Articles 14 and 19, like any other Act. He, however, denies that the classification conceived under the sen. I, suffers from any of the alleged vices. He, secondly, contends that actual income or the capacity to work, is irrelevant for tax on professions and trades in the same manner, as the same is irrelevant for several legislative tax entries in the three lists of the seventh schedule. Mr. Sawant conceded that in view of Section 141 of the amended CPC making Order XXVIA thereof inapplicable to the writ proceedings, notice to the Advocate-General was unnecessary even though the validity of the Act is challenged in these cases.

8. As the entire attack is concentrated on Schedule I of the Act, it is necessary to examine it closely. In terms of Section 3(2), the tax payers are divided into twenty classes specified in column two, by twenty entries of the schedule, twentieth entry being marked for residuary class to be specified by the Government under second proviso to Section 3 (2) of the Act. The classification is based on the avocations that the tax-payer follows and sub-classification against each entry reflects the different category of each such avocation. Rate of tax for each such classified assessee is indicated in the third column, it being ensured that the ceiling limit of Rs. 250 per annum prescribed under Article 276 is not overstepped.

9. The question is whether this classification is violative of Article 14 of the Constitution for any or all the reasons suggested. It is now well settled that while class legislation is impermissible under our Constitution, reasonable classification for ensuring maximum possible equality is not only not prohibited, but is indispensable to avoid equality amongst unequals. All that is necessary is that such classification should be based on intelligible differentia and such differentia should have nexus with the object of the Act.

10. Section 3 of the Act contemplates taxing (1) professions, (2) trades (3) callings and (4) employments in terms of the legislative powers under entry 60, List II of the seventh schedule. It was open to the legislature to enact separate law for each such avocation instead of a compendious legislation covering all the four avocations under this Act. It was also open to it to levy tax on each such

avocation at a flat rate of Rs. 250 per annum. The Legislature, however, has chosen to adopt more just and equitable course of rationalising the tax and reducing the same from the permissible ceiling limit, in the case of lesser beneficiaries of such avocations. The classification of tax payers not only by reference to the broad four avocations but also- by their species thus becomes indispensable. The nineteen classes are but the different species of the same four avocations. The classification of avocations and their species into several entries is based on the inherent differences in the activities involved therein and mechanism of their earnings. Further sub-classification of the avocations reflect their different categories in the same avocations indicating the extent to which pursuers thereof happen to be the beneficiaries which in turn depends on the performance, the footing and the overall standing, they command in their respective avocations. The variations in the nature of the activities and mechanism of earning, naturally necessitated adopting different measures of such benefits for different such categories, rendering the application of any uniform standard difficult.

11. Thus the actual income from the employment in class one, the area of operation or the length of practice in classes 2, 14 and 16, membership or being premise in the stock exchange in class 3, or being a book-maker or jockey in the Turf Club under class 6, or seniority or juniority of artists in class 7, turn over of the dealers in class 8, number of workers in a factory or establishment under class 9 or 10, nature of the vehicles or Banks in clauses 13 and 18, amount of security in class 15, are adopted as the yardstick for measuring the tax payer's overall standing or performance or footing in the respective avocations and consequential benefit to them. No such sub-classification is attempted in respect of the avocations covered by entries at serial Nos. 4, 5, 11, 12 and the same are charged at the maximum rate of Rs. 250 per annum.

12. Though not identical or uniform, the measures still furnish an index of the potential standing or footing in the respective avocations, the same ultimately being indicative of their capacity to earn and pay. The rate of tax is related to the mode of classification. Opinion may differ as to the comparative efficacy, propriety and even advisability as to the measures so adopted to test such over-all standing and footing in the respective avocations. The measures so adopted nonetheless cannot be held to be irrelevant. This classification and sub-classification is thus based on the inherent differences of the activities and complex modes of performances therein and is indispensable process of the Legislative decision not to have an uniform rate of tax. It is difficult to say that the measures so adopted for the different avocations, their species, and different categories thereof, are irrelevant for the purpose of fixing the rate of tax. The classification thus cannot be said to be irrational or without any intelligible basis nor such basis of classification can be said to have no nexus or relevance to the object of implementing the tax liability under the Act.

13. The principal question strenuously urged by the learned advocate for the

petitioners is that equality before law amongst the legal practitioners as to their liability of the professional tax can be ensured only by basing or relating such tax to their income from the profession. Any other basis and their classification by reference thereto, is bound to be violative of Article 14 of the Constitution. The contention appears to be devoid of any basis or substance. Tax on the face of it is on different avocations such as professions, trades, callings and employments and not on income. One can ill-afford to mistake the base of the tax for the basis of the enforcing mechanism thereof. When income is the base of tax, as in the case of Income Tax, only basis of the enforcement machinery can conceivably and inevitably be the income. This is a rare instance of the synonymy or the identity of the both. The same cannot be true in respect of other taxes of which the base is not the income and finding of some convenient mechanism adjustable and suitable to the tax base concerned becomes indispensable. The fact that ultimately the assessee has to pay such tax out of his income, or its incidence ultimately falls on the income so earned by him, can have no relevance whatsoever on what the base of the tax is. It is the entry, and continuance in the profession that attracts the liability to professional tax, and not the fact of his earning and paying out of income which is incidental. The importance of the earning being the ultimate object, and tax being paid out of it, cannot make any difference to what the taxable event in the context happens to be, namely of one's merely getting engaged in the such avocations. To ignore the distinction between such bases of taxation on any such ground would amount to wipe out distinguishing marks of different taxes covered by the different entries in the three lists of the seventh schedule of the Constitution. Taxes on (1) income, (2) property, (3) capital, (4) wealth, (5) expenditure or (6) gifts, to cite few of the many such entries as to direct taxes, in that event, would cease to have any difference or substance excepting in their tall nomenclatures.

14. In every taxing statute, the Legislature has to devise convenient enforcing mechanism appropriate to the taxable event and the base. It must be left with wide discretion and latitude in its choice. It may choose to base or relate its mechanism to income or it may base it on some other aspect of tax base. That the Legislature may find it convenient in certain cases to base such taxes on, or relate such taxes to, the income does not make such basing or relating an indispensable or inflexible rule of taxation. Close reading of several such entries in these lists also would indicate that actual income of the assessee or even the paying capacity, is not the ingredient of either of the legislative powers to tax or the structure of taxation contemplated thereunder. Expenditure and gift taxes are illustrations in point. A person attracts the liability to expenditure tax by sheer fact of his having incurred the expenditure, and to gift tax by sheer circumstance of his donating the property, without regard to whether he earns any income or not and any property is left with him to enable him to pay the tax. What can be true of the expenditure and gift tax can also equally be true of the tax under consideration, viz. on profession etc., covered by the Act herein.

15. Mr. Dhanuka faintly suggested that tax on trade or profession is virtually a

tax on income. In support of this, he relied on the observations of Mudholkar J. at p. 78 of his judgement in the case of *Bharat Kala v. Municipal Committee* (1965) 69 Bom. L.R. 69. The stray observations made in quite a different context appears to be more explanatory of the genesis of Article 276 rather than decisive of whether it is a tax on income or not. In the case of *MR. KAMTA PRASAD AGGARWAL ETC. Vs. EXECUTIVE OFFICER, BALLABGARH and Another*, the Supreme Court has now expressly indicated how such tax cannot be treated as tax on income. In the Full Bench Judgment of the Allahabad High Court in the case of *Sushil Chander Anand Vs. State of U.P. and Others*, several cases are referred indicating how the tax under consideration cannot be said to be tax on income.

16. Our attention was drawn to certain passages from books on public finance and planning by certain authorities, including the *Economics of Public Finance*, III edn., by Mr. Philip E. Taylor at p. 292, and the *Science of Public Finance* by G. Findlay Shirros at pp. 131 and 202-203. Suffice it to note that none of the authors, even hint of the income and paying capacity being indispensable ingredients of any tax structure. Apart from the absence of any discussion on the legal and constitutional aspects on the question, the discussion as to what should be the base of taxation, as distinguished from its enforcement mechanism can have no relevance. No useful purpose also will be served by discussing in details the provisions of the identical enactments in other states in some of which such tax is related to gross or net annual income and to which our attention was pointedly drawn by Mr. Dhanuka. It only demonstrates, as discussed earlier, how Legislature can adopt that base also. It does not, however, mean that it could be the only basis.

17. Reliance was placed by Mr. Paranjape on the judgment of the Allahabad High Court in the case of *Sushil Chander v. State*. The ratio of the judgment supports the respondents rather than the petitioners. The validity of the concerned U.P. enactment of 1965 on professions, trades, etc., was challenged in this case. The tax was imposed on graduated slabs and co-related to the gross income of the assessee. One of the points raised was that the Act was confiscatory in that the assessees left with no net income were liable to pay from their pockets. This contention was rejected in his leading judgment by Jagdish Sahai J. (para. 32 p. 325) saying that gross income is merely used as a yard stick to measure the tax liability, and that the same was not the subject-matter of the tax as such. The learned Judge also observed that the maximum amount involved of Rs, 250 per annum was too meagre to admit of any such contention. In his concurring separate judgment, Beg J. made the following observations (para. 62, p. 333) :

...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.

To the same effect in substance are the observations of the Supreme Court in the case of *Kamta Prasad v. Ex. Officer, Ballabgarh* (para. 9, p. 686):

...A tax on profession is not necessarily connected with income. This is clear from the tax on professions imposed by several municipal authorities at certain rates mentioned in the relevant statutes. A tax on income can be imposed if there is income. A tax on profession can be imposed if a person carries on a profession. Such a tax on profession is irrespective of the question of income.

17. The assumption that the tax on the land or property is based or related to income of the landholder is again not strictly correct. It is merely the estimate of the income that is made the basis of such tax. The productivity or fertility of the land or probable rental value of the property, cannot afford any definite and certain index of the actual income therefrom. The property and the land does not cease to be liable to tax if it does not yield any income during any year for any reason, or no attempt is made to produce, or property itself is incapable of fetching actual income. If mere fertility, productivity and probable rental value can be the basis for the land revenue assessment and property taxes, there is no reason why some measure of the standing of the persons in the profession, trade, calling and employment without regard to actual income thereof should not afford identical index for the taxes under consideration. It should be all the more so when the degree of proximity between the proficiency in the profession and income therefrom is comparatively far lesser as against the proximity between fertility of the land and its income. There is thus no basis for the contention that income alone can be the basis of the enforcement machinery of the tax under consideration.

18. It was then urged that charging legal practitioners at flat rates without reference to their income from profession amounts to treating unequals, that is lawyers earning large incomes and small incomes, as equals, Strong reliance was placed in this behalf on the judgment of the Supreme Court in the case of (1) *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, (2) *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, and (3) *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, and few other cases to which reference is unnecessary. In the first case land tax was sought to be imposed at flat rate of Rs. 2 per acre per annum without regard to the location, fertility and the productivity thereof. In the second case, revenue assessment rates Were revised without regard to such fertility and productivity of the land and by reference to factors found to be irrelevant. Notwithstanding the difference in nomenclature, both those cases virtually deal with land assessments for the fixation of which fertility and productivity of the land is considered to be indispensable basis under our land revenue system. In the third case, rateable

value of the factories for the property tax under the Municipal enactment of Ahmedabad was sought to be fixed at the flat rate of the floor area in disregard to its quality, nature and extent of construction, location and possible rental value. In all these cases provisions disregarding the patent inherent inequalities were struck down as being violative of Article 14 of the Constitution.

19. The ratio of these cases cannot be applicable here. It is already noticed how rate of tax in these cases is based not on the actual income but on an estimate thereof. The Court has still found it obligatory for the Legislature to take note of such estimate of their income yielding capacity in devising the enforcement mechanism to ensure equality before law. The reason is that the base of the tax, in essence, is the quality and rental capacity of the property which is capable of ascertainment as also its ultimate contribution to the income along with the human labour and talent working thereon. The same cannot be true of the tax the base of which is the mere circumstance of engaging in the avocations which per se is not capable of being valued in terms of money. Income from the avocation entirely depends on the skill of the pursuer, in exploiting his talents and opportunities the avocations afford. This is just to emphasise how possible classification by reference to the estimate of income in one case cannot necessarily furnish basis for the classification in every other case. This apart, judgment of the Supreme Court in *Dantuluri Ram Raju and Others Vs. State of Andhra Pradesh* and Another, illustrates" how imposing tax at flat rate even on the land may not turn out to be violative of Article 14, if the circumstances so justify. The judgment indicates how *K. T. Moopil Nair's* case (supra) itself takes notice of such exceptional instance (para. 27 p. 836). Species of tax on profession and avocation by itself constitutes an exception in this behalf. Once the income from profession is found to be a dispensable basis, disparities of the income of the pursuers thereof cease to be of any relevance. Validity of the classification is to be judged by reference to the object of the Act namely to impose tax on avocations as such and not by reference to the purpose thereof, i.e., augmenting the employment scheme. That the total tax amount per year cannot exceed Rs. 250 also distinguishes this tax from the tax on land and property tax the extent of which can be unlimited.

20. It is also not correct to say that the ability to pay of the assessee is an indispensable ingredient of the tax enforcement machinery. Reliance on the judgment of this Court in the case of *Cantonment Bd., Poona v. Western India Theatres* (1953) 56 Bom. L.R. 45, *Burmah Shell Oil Storage and Distributing Co. of India Ltd. Vs. Licensing Officer of Tamluk Municipality and Others*, ; *Seth Sukhlall Chandanmull Vs. A.C. Jain, Income Tax Officer and Another*, and *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, does not appear to be well founded. While indicating the difference between the tax and the fee, the Supreme Court in the last mentioned case made the following general observations without reference to the nature of any particular tax, at the end of para. 43 (p. 295):

...Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay.

The observations in the first case while upholding the higher rate of entertainment tax in cantonment areas are equally general. Sinha J. in the second case was considering the legal validity of the trade tax being imposed at higher rates for higher slabs of the capital invested by the companies. The learned Judge upheld so relating to the rate of tax with such higher slabs of the capital. In the second Calcutta case, the learned Chief Justice speaking for the division Bench followed the ratio of this case while upholding the relating of the higher tax rates to the higher slabs of income. The learned Judges had the relative paying capacity of the assesseees in mind while making reference to their "paying capacity". With respect, there cannot be any quarrel with this proposition. But observations of Sinha J. in the first case impliedly followed in the second case that paying capacity is an ingredient of the taxing power, though appropriate to the context, appears to be wide off the mark. With respect, the observations in such a broad form do not appear to be well founded.

21. Ability to pay can be said to be relevant only indirectly in that no tax structure can succeed, without the existence of such ability to pay. Section 3 of the Act contemplates levying the tax only on getting engaged by any one in any one of these four avocations. It will be legitimate to assume that none will engage or continue engaging in the avocation unless it is found to be paying for him.. It should not be difficult to assume this when the liability does not exceed more than Rs. 250 per annum. This can be true even of the practitioners crossing the age of sixty-five. Such assesseees stand on the same footing as the assesseees to gift tax and expenditure tax whose ability to pay has to be assumed from the mere circumstance of their donating and expending. This could also be true in regard to assesseees of the property tax and land revenue, liability to pay under which is not dependent on the properties actually yielding income or the assessee possessing money to pay.

22. It is also argued that rate of tax and exemption therefrom in the case of employees covered by entry 1, is based on their monthly income while legal practitioners are discriminated by denying this basis to them. Suffice it to note that once the classification between salary and wage earners under entry 1 on the one hand and practitioners of the profession under entry 2 on the other, is found to be valid, treatment meted out to the person falling under such different classes cannot be compared. Virtually it is comparison between unequals. The measure found appropriate for one class obviously cannot be necessarily suitable for the other class.

23. Many of the assesseees of this tax may not be liable to Income Tax. The cost and the inconvenience involved in the independent investigation of the income of such tax-payers, only for this purpose, may militate against the advisability of basing or relating the tax, with the income, having regard to the meagreness of

the ceiling limit of Rs. 250 per annum. Administrative inconvenience is undoubtedly a relevant factor in taxation system, as long as it does not itself contribute to violation of Article 14.

24. This apart, assumption that a relating to this tax with the net or gross income of the assessee can ensure the equality also does not appear to be well founded. It will not be possible for the State to make the tax liability proportionate to the net income. The total amount of Rs. 250 is too meagre and distributing the same between different levels of income and making the same proportionate would result in the reduction of the number of several potential assesseees in the lower income groups, and consequently in the loss of the expected revenue from this head of the tax. If the rate of tax is graduated with the slabs, the marginal assesseees falling between the two slabs and particularly of the last slab can legitimately complain against inequality. This can be demonstrated by reference to the salary and wage earners covered by entry No. 1. Employees falling in the last category earning more than Rs. 1,500 per month are subjected to tax at uniform rate making them equal notwithstanding their monthly income being unequal. Thus arithmetical and absolute equality is simply impossible whether the tax is based or related with the income or with some other measure such as the one adopted in the instant case.

25. Once the supposed indispensability of basing or relating this tax with the net or gross income is eliminated, the only question that survives for consideration is whether (1) area and (2) the years of practice in this profession can furnish reasonably acceptable basis for classification and fixing rates of tax. Corporation area as defined under the Act ordinarily covers areas where industrialisation is developed and advanced amenities of life are available. That such areas furnish better opportunities to the practitioners can hardly be doubted. The circumstance that a few lawyers in the Corporation area earn lesser than the other set of few lawyers in the non-corporation area, cannot make difference to the above broad rule. It is equally well known that it takes some time before a person gets foothold in the profession, acquires confidence and starts getting clientele. Opinions may differ as to how many years should it take for a lawyer to get such a footing. In fact, actual position may differ from place to place and man to man. The fact that some seniors earn lesser than their juniors again cannot alter the above broad rule. Opinion may again differ as to how many years of practice should be totally exempted from the tax and how much amount should be taxed after how many years" practice. These are all policy matters for the Legislature to decide. The Act cannot be struck down merely because some better scheme also could have served the purpose. The only question that really calls for consideration is whether this can or cannot furnish a dependable basis for classification. It should indeed be difficult to hold that this can never furnish basis for such classification or the area of practice and the years of practice can have no nexus with the success or achievements in the profession. In fact, number of years in practice is considered to be always a relevant qualification for several posts open to legal practitioners. The area and years of practice ordinarily

can be the index as to the person's prospects and potentialities in the profession, even though in individual cases the test may fail. It is difficult, therefore, to hold that these factors can have no nexus with the basis of tax and that sub-classification resorted to on the basis thereof in entry 2 is violative of Article 14 of the Constitution.

26. While considering this question, it shall have to be noted that there is always a presumption about the constitutionality of a statute, when the same is challenged by reference to Article 14 of the Constitution. Secondly, the Legislature is left with fairly large latitude both in the matter of choosing its persons, objects, things and events for imposing the taxes and also a suitable mechanism for its enforcement. The classification adopted cannot be held to be bad merely because some better classification or sub-classification is possible. Reference in this context to the observations of the Supreme Court in the case of *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, will be relevant. For the purpose of excise duty the match stick manufacturers were divided into three classes A to C depending on their production capacity and the extent of the use of mechanical and manual power therein. Class C was subjected to lower rate. It was found that this classification was abused by dubious methods resulting in the virtual conversion of B into C class. The C class was, therefore, abolished. Beneficiaries of C class challenged its validity as being violative of Article 14 of the Constitution, While rejecting their claim, the court observed (p. 503) :

...bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle.

The Court then observes (p. 504) :

Another proposition which is equally settled is that merely because there is room for classification it does not follow that legislation without classification is always unconstitutional. The court cannot strike down a law because it has not made the classification which commends to the court as proper. Nor can the legislative power; be said to have been unconstitutionally exercised because within the class a sub-classification was reasonable but has not been made.

The Court then proceeds (p. 504):

...the modern State, in exercising its sovereign power of taxation, has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not.

The Court further continues:

...From the judicial inspection tower the Court may only search for arbitrary and irrational classification and its obverse namely, capricious uniformity of treatment where a crying dissimilarity exists in reality. Unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review.

27. It will also be useful in this context to refer to the classic dicta of Rowlatt J., approved by the Supreme Court in the case of Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, :

In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

28. This of course, is subject, firstly, to the constitutional limitation on any legislation and, secondly, to the equally important rule of interpretation that the benefit of doubt as to the meaning of any expression would also be given to the citizen.

29. It is thus riot possible to hold that classification and sub-classification indicated under the schedule is violative of Article 14 or 19 of the Constitution or the tax basis thereunder is irrational or arbitrary or violative of the preamble of the Constitution. The contentions in this behalf are liable to be rejected.

30. Rules in all these petitions are liable to be discharged.

31. Rules discharged.

32. No order as to costs.

Pendse, J.

33. (dissenting) In these three petitions under Article 226 of the Constitution of India, the petitioners challenge the constitutionality of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, which hereinafter will be referred as the "Act".

34. The Act received the assent of the Governor on June 10, 1975 and Sub-section (3) of Section 1 of the Act provides that it shall be deemed to have come into force on April 1, 1975. The Act has been enacted to provide for the levy and collection of tax on professions, trades, callings and employment for the benefit of the State. These petitions are based on allegations which are more or less similar to each other and petition No. 2627 of 1976 may be taken as a typical and extreme case.

35. The petitioner No. 1 is practising as an advocate at the Poona Bar after he retired from the service in the year 1963. The petitioner No. 1 secured advocate's sanad in December 1963 and since then he has been engaged in the profession of law. The petitioner No. 1 who is about sixty-five years old is earning an income of about Rs. 150 per month and in support of these averments, a copy of the assessment order passed by the Income Tax Officer in respect of the year 1974-75 is produced. The petitioner No. 2 who is also about sixty-five years old is practising at the Poona Bar from the year 1970 onwards. The petitioner No. 2 retired from service in the year 1966 and thereafter having secured degree in law commenced practice in the year 1970. The petitioner No. 2 states that

having started practice in law at later age in life, he is not able to make mark in the profession and his income is hardly Rs. 100 per month. The petitioner No. 1 having been engaged in the profession of law in the Corporation area for a period of more than ten years is liable to pay to the State Government a tax at the rate of Rs. 250 per annum, while petitioner No. 2 being engaged in the profession of law for a period of more than two years but less than five years is liable to pay tax at the rate of Rs. 150 per year as provided by Section 3(2) of the Act. The petitioners have, therefore, approached this Court under Article 226 of the Constitution of India challenging the levy of tax mainly on the ground that the provisions of the Act are constitutionally invalid and affect the fundamental rights guaranteed to the citizens of India.

36. The preamble of the Act shows that as it was expedient to provide for the levy and collection of a tax on professions, trades, callings and employments for the benefit of the State for raising additional resources needed for implementing the Employment Guarantee Scheme of the State Government and to provide for establishment of the Employment Guarantee Fund and for matters connected therewith, the Act was enacted. The Act applies to the whole of State of Maharashtra and Section 3 of the Act provides for levy and collection of tax on professions, trades, callings and employments for the benefit of the State. Sub-section (2) of Section 3 of the Act provides that every person engaged in any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of Schedule I shall be liable to pay to the State Government the tax at the rate mentioned against the class of such persons in the third column of the said schedule. The proviso of the sub-section lays down that the tax so payable in respect of any one person shall not exceed two hundred and fifty rupees in any year. The word "person" has been defined u/s 2 (e) of the Act which includes, apart from the person who is engaged in profession, trade, calling or employment, a Hindu undivided family, firm, corporation, or other corporate body, any society, club or association so engaged.

37. It has been mandatory u/s 5 (2) of the Act for every person to obtain a certificate of enrolment from the prescribed authority in the prescribed manner. Sub-section (3) of Section 5 of the Act provides for an application for a certificate of registration to the prescribed authority in the prescribed form within thirty days of the publication of the Act in the Official Gazette. The prescribed authority is required thereupon to grant a certificate after making enquiry, if necessary, and the certificate of enrolment would state the amount of tax payable by the holder. Section 9 of the Act provides for the consequences of the failure to pay the tax, while Section 10 of the Act provides for a penalty for non-payment of the tax. Section 11 of the Act enables the State to recover all arrears of tax, penalty, interest and fees as arrears of land revenue. Section 20 of the Act provides that any person who fails to comply with any of the provisions of the Act shall, on conviction, be punished with fine not exceeding five thousand rupees, and, when the offence is a continuing one, with a fine not exceeding fifty rupees per day during the period of the continuance of the offence....

38. Schedule 1 of the Act provides for rates of tax on professions, trades, callings and employments. The schedule has divided the class of persons who come within the range of taxation in twenty classes, the last being the residuary, to be specified by the Government. Class I includes persons who are salary and wage earners. The rate of tax for this class is on a gradual scale. Persons whose monthly salary or wages are less than Rs. 400 are not liable to pay any amount of tax and as the income grows from Rs. 400 onwards, a gradual scale has been fixed and the person whose monthly salary or wages are Rs. 1,500 or more are required to pay the tax at the rate of Rs. 20 per month. Out of the remaining eighteen classes, persons covered by serial Nos. 3, 4, 5, 6, 7, 11, 12, 14, 16, 17 and 18 can be grouped together, as in respect of these persons, a flat rate of tax has been fixed under the schedule. In regard to the dealers registered under the Bombay Sales Tax Act, 1959, item No. 8 of the schedule provides that for dealers whose annual gross turnover of all purchases is Rs. 50,000 or more but less than Rs. 75,000, the rate of tax is Rs. 50 per annum. As the annual gross turnover increases, the rate of tax gradually increases. Items Nos. 9 and 10 cover occupiers of factories as defined under the Factories Act, 1948 and the employers of establishments as defined under the Bombay Shops and Establishments Act, 1948 respectively. In respect of Item No. 9 - occupiers of factories - where no more than fifteen workers are working, the rate of taxation is fixed at Rs. 150, while the factories where more than fifteen workers are working, such occupiers are required to pay tax at the rate of Rs. 250 per annum. In regard to the employers of the establishments where there are no employees, no tax is levied, while in respect of the establishments where not more than five employees are employed, the tax is fixed at Rs. 50 per annum. As the number of employees increases, higher tax is charged. Item No. 13 of the schedule provides that persons who are holders of permits for transport vehicles granted under the Motor Vehicles Act, 1939, are required to pay the tax at the rate of Rs. 50 per annum in respect of each taxi or three-wheeler, while Rs. 100 per annum are required to be paid in respect of each truck or bus but the total amount payable by the holder cannot exceed Rs. 250 per annum. Item No. 15 covers individuals or institutions conducting chit funds and provides that where the value of the security required to be lodged by them with the Registrar u/s 13 of the Maharashtra Chit Funds Act, 1974, is Rs. 5,000 or more but less than Rs. 25,000, the rate of tax is Rs. 150 per annum and where the value of the security is Rs. 25,000 or more, the rate of tax is Rs. 250 per annum. The value of the security required to be lodged with the Registrar under the Maharashtra Chit Funds Act, 1974 is fixed with reference to the business which an individual or an institution conducting the chit fund does in a particular year.

39. Item No. 2 covers a class of persons who are engaged in professions covering four categories. The first category covers legal practitioners including solicitors and notaries public. The second category is of medical practitioners including medical consultants and dentists. The third category is of technical and professional consultants, including architects, engineers, R.C.C. consultants,

plumbers, tax consultants, chartered accountants, actuaries and management consultants. The last category covers chief agents, principal agents, special agents, insurance agents and surveyors or loss assessors registered or licensed under the Insurance Act, 1938. With reference to this class, method of taxation provided for is one which is different from all other classes. The rate of tax in respect of these professionals is fixed with reference to the standing in the profession. There is a further sub-classification in respect of persons who are carrying the profession in any Corporation area and those who are carrying in any other areas of the State, Where the standing in the profession of a person in any Corporation area is less than two years, no tax is levied but where the standing is two years or more but less than five years, the rate of tax is Rs. 150 per annum. Where the standing is five years or more, the rate of tax is Rs. 250 per annum. In respect of areas other than the Corporation area, on persons having standing in profession for less than two years, no tax is charged but on persons with two years" standing but less than five years, an amount of Rs. 50 per year is levied as tax. In respect to the persons whose standing is five years or more but less than ten years, the rate of tax is Rs. 150 per annum and the cases where the standing is more than ten years, Rs. 250 per annum is the tax levied.

40. The petitioners complain that the entire Act should be struck down as it is a class legislation and the schedule is based on arbitrary and irrational consideration resulting in treating the unequals as equals. The petitioners also contend that different tests are applied in regard to the measures of tax to different classes and capacity to pay is taken into consideration with reference to some classes, while it is being completely ignored in respect of others. The petitioners also complain that sub-classification of professionals on the basis of standing in the profession is entirely misconceived and the basis of such classification is discriminatory as there is no reasonable relation to the object sought to be achieved. The petitioners also complain that the taxation is oppressive and unjustified and amounts to an unreasonable restriction on the right of the petitioners to carry on the profession. The petitioners also make a grievance that no provision of enquiry before fixing the liability is made and the tests which are applied are entirely arbitrary, and would result into a confiscatory measure.

41. The petitions were duly admitted on April 26, 1976 and on behalf of the respondents Nos. 1 and 3 - the State of Maharashtra, the Commissioner of Profession Tax and the Profession Tax Officer at Poona - Mr. V. V. Madkaikar, personal assistant to the Commissioner of Sales Tax, Mazgaon, Bombay, has filed a return on April 24, 1978. The return indicates that the tax levied under the Act is not a tax on income and, therefore, the income made by a person is entirely irrelevant. It is further stated that the tax amount is related to income only in case of persons engaged in employment and there is no relation to income in respect of all other categories. It is pertinent to note in this connection that no explanation is given on behalf of the respondent Nos. 1 to 3 in the return as to

why different methods in respect of different classes are adopted while fixing the rate of tax. It is further stated in the return that in case of employees, the method of charging the rate of tax on the basis of actual income is taken into consideration because it is convenient and rational method. Lastly, it is mentioned that the classification of persons carrying profession in Corporation area and other areas is reasonable as those in first category are better placed in life, It is necessary to state that the return does not indicate why in cases of professionals covered under item No. 2, the method of levy of the tax on the basis of the standing is adopted and what is the rational relation of such differentia to the objects sought to be achieved under the Act.

42. The Bar Council of Maharashtra, which is a statutory body representing all legal practitioners in the State, filed Civil Application No. 947 of 1978 for being joined as a party to the petition. On April 20, 1978, this Court directed that the Bar Council of Maharashtra should be added as respondent No. 4 to the petitions, as the petitioners consented to join the Bar Council as party to the proceedings, Mr. M. M. Vaidya, the secretary of the Bar Council, has filed a return on July 14, 1978 on behalf of the Bar Council. In the return, it is stated that sub-classification of item No. 2 of professionals on the basis of standing in the profession is violative of equal protection as there is no clear nexus between the standing in the profession and the income which a person earns. The affidavit indicates that actual tax levied on the members of the profession has been very burdensome and forty-one Bar Associations in the State have passed resolutions complaining against the levy of tax on the basis of standing in the profession and have requested the Bar Council of Maharashtra to make representations to the Government to condition the levy on the basis of income earned by the professionals. The affidavit further states that taking into consideration the discontent created in the State by levy of tax on an arbitrary and discriminatory basis, the Bar Council of Maharashtra has passed a resolution on April 23, 1975 making grievance in respect of the levy of tax and requesting the State to amend the method of levy of tax.

43. Mr. Paranjape, the learned counsel for the petitioners, has raised three or four contentions in support of the petition. It was first contended that division of tax-payers into various classes is bad and all tax-payers should have been treated alike. It was further argued that in a taxing statute, two different tests in regard to the method of levy of taxation cannot be applied in regard to different classes without any rational basis. It was further argued that in regard to the professionals covered by item No. 2 of the schedule, capacity to pay is not at all taken into consideration and the only basis for sub-classification is the standing in the profession. The learned counsel contended that standing has no reference to the income which a person earns in the profession. It was finally argued by Mr. Paranjape that sub-classification on the basis of standing in the profession in the Corporation area and other areas is bad and discriminatory and is made without any rational basis. It is necessary to state that though the petitioners have challenged the provisions of the Act with reference to other classes also, Mr.

Paranjape has restricted his challenge in respect of professionals only, covered under item No. 2, during his arguments.

44. Mr. Dhanuka, the learned counsel appearing on behalf of the Bar Council of Maharashtra, adopted the contentions raised by Mr. Paranjape and in addition has pin-pointed two or three facets of the matter. The learned counsel contends that the State has right to select the method of taxation, but it must be reasonable and a legal basis is required for the differentia between the two classes. It was further argued that the classification of the professionals is without just basis. Mr. Dhanuka further argued that the language of Article 276 of the Constitution of India indicates that income is an essential yard stick in a tax statute and the paying capacity and the income are inter-related. It was also contended that it is necessary to take into consideration the effect or impact of the tax and whether by and large it operates unreasonably. Mr. Dhanuka contends that as the paying capacity has been completely ignored in respect of the professionals covered under item No. 2 of the schedule, the framing of the schedule is entirely arbitrary. Mr. Dhanuka also urged that in case of salary and wage earners, the income is taken into consideration and so also, in case of persons covered under item Nos. 8, 9, 10, 13 and 15, the annual gross turnover, the number of workers employed and the number of vehicles plied are taken into consideration, at It indicate\* the income which a person earns. In case of professionals the method of levy of tax has no connection whatsoever with the income which a professional earns.

45. Mr. Sawant, the learned Additional Government Pleader appearing on behalf of the respondents Nos. 1 to 3 submitted that it is not, necessary to take into consideration the paying capacity while levying the tax by the sovereign State. Mr. Sawant contended that the tax levied is not a tax on income but is a tax on profession and as such the consideration of income is entirely irrelevant. It was further urged by the learned counsel that the salary and wage earners is a class by itself and if a different treatment is permissible in case of different classes, according to Mr. Sawant, the standing in the profession has a rational relevant relation to the objects sought to be achieved and, therefore, the provisions of the Act cannot be struck down as violative of Article 14 or 19(1)(g) of the Constitution of India.

46. At the time of hearing, it was noticed that in spite of the fact that the State legislation has been challenged, notice was not issued to the Advocate-General of the State. When this fact was brought to the attention of Mr. Sawant, and as we were inclined to issue the notice and adjourn the hearing of the petition, Mr. Sawant specifically stated that the State does not desire that hearing should be adjourned to enable service of the notice on the Advocate-General. Mr. Sawant further stated that the respondents Nos. 1 to 3 would make no grievance at any stage for non-service of the notice on the Advocate-General even though a State legislation is under challenge.

47. Entry 60 in List II of the Seventh Schedule of the Constitution of India

enables the State to make laws for taxation on professionals, trades, callings and employments. Article 276 of the Constitution of India provides that 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 total amount payable in respect of any person to the State or to any other body by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum.

48. It is now well settled that tax on professions is not a tax on income. The tax on profession is imposed because a person is engaged in a profession. In these petitions, there is no dispute between the parties about the legislative competency of the State of Maharashtra to levy the tax, nor is it a case of the petitioners, that the tax which is levied is a tax on income and, therefore, amounts to double taxation. The grievance of the petitioners, in short, is that the classification of different taxpayers made under the schedule is arbitrary and, in any event, sub-classification of item No. 2 covering the professionals on the basis of area of operation and the standing in the profession is violative of Article 14 and 19(1)(g) of the Constitution of India, as sub-classification is made first without taking into consideration the capacity to pay and secondly there is no reasonable nexus between the sub-classification and the object sought to be achieved by the Act.

49. Let us first consider whether the classification of tax-payers, made by the State Legislature, by the schedule is reasonable or otherwise. It is now well settled that it is open for the Legislature to make classification but the classification must be founded on intelligible differentia which distinguishes those grouped together from others. It is necessary to find out whether the oft repeated tests laid down by the Supreme Court in this connection are satisfied in the present case. Turning to the schedule, it will be noticed that the Legislature has divided the tax-payers into different classes. The persons who are salary and wage earners are classified separately from those who are engaged in professions, trades, or callings. Persons who are engaged in professions are divided into various sub-classes so also persons who are carrying on trades and other callings. The division appears to have been made on the basis of the avocations which different persons are following and the division which has been made is clearly founded on intelligible differentia which distinguishes one group from the other. The dealers whose gross turnover is Rs. 50,000 or more, so also the occupiers of factories, owners of petrol pumps, money-lenders, banking companies and co-operative societies are categories which are different from each other and if the Legislature has chosen to classify them separately, it is difficult to appreciate the contention that the classification is not founded on intelligible differentia which distinguishes one group from the other. From the schedule it is very clear that the persons who are grouped together belong to one class following a particular avocation and it would be difficult to say that the

classification is not founded on intelligible differentia. The contention of Mr. Paranjape in this connection must be rejected.

50. But the crucial point which is required to be answered in these petitions is whether the second test laid down by the Supreme Court, where the legislation is challenged on the ground of violation of Article 14 of the Constitution of India is satisfied. It is now well settled that not only the classification must be founded on intelligible differentia which distinguishes those grouped together from others but the differentia must have a rational relation or nexus to the object sought to be achieved by the Act. The satisfaction of one or the other test would not save the legislation from the vice of Article 14 of the Constitution of India and it is necessary to establish that both tests are complied with before upholding the legislation. The second test that the differentia must have a rational relation to the objects sought to be achieved by the Act is, according to the petitioners, not at all satisfied in the present case. The main thrust of the argument, both of Mr. Paranjape and Mr. Dhanuka is that the sub-classification made under item No. 2 covering the professionals, on the basis of the area of operation and standing in the profession has no rational or reasonable relation to the objects sought to be achieved by the Act, and it is necessary to answer that contention to decide the fate of the petitions.

51. In cases where the challenge to the legislation is based on violation of Article 14 of the Constitution, the Supreme Court has observed in the case of *Kangshari Haldar and Another Vs. The State of West Bengal*, that it is necessary to ascertain the policy underlying the statute and the object intended to be achieved by it for the purpose of deciding whether the intelligible differentia has a rational relation to the object sought to be achieved by the Act. The object of every tax is to secure revenue and the object of the Act has been expressly stated in the preamble that levy and collection of tax, on professions, trades, callings and employments is provided for the benefit of the State for raising additional resources needed for implementing the Employment Guarantee Scheme of the State Government. The object is undoubtedly laudable because the State is in need of additional revenue for the purpose of guaranteeing employment to those who are unemployed. The policy underlying the Act seems to be that a revenue should be collected from those who are either in employment or making income from the professions, trades and callings so as to lend a helping hand to a large mass of unemployed people in the State. The policy is obvious, that if one is earning, then one should give a part of it to those who are unable to secure a source of income due to the large unemployment problem prevailing in the State. The policy underlying the statute, therefore, is that one should part with some of his earnings to help a person who has none. Once this policy underlying the statute and the object intended to be achieved by it is ascertained, the next step in the process is to find out whether the classifications made by the schedule have a rational relation to the object which is sought to be achieved by the Act. This is really the crux of the matter and it is necessary to closely scrutinise this aspect of the matter.

52. Mr. Paranjape and Mr. Dhanuka, the learned counsel contended that even assuming that classification of professions in item No. 2 is valid, still the sub-classification of professionals made in item No. 2 is not founded on intelligible differentia because sub-classification is made first on the basis of those carrying on professions in a corporation area and in respect of other areas. It was urged by both the learned counsel that differentia made on this basis has no rational relation to the object sought to be achieved, nor the classification is founded on intelligible differentia. The second leg of this argument is that the sub-classification of professional on the basis of the standing in the profession has no relation, at all, to the objects sought to be achieved.

53. It was urged that area of operation or duration spent in the profession can never reflect the income of professional. The area of operation is not restricted in case of professionals and mere standing does not necessarily give advantage in profession. It is common knowledge that people continue in profession for years together in spite of meagre or no income, with the hope that tomorrow would be a better day. The suggestion that Corporation area attracts more opportunities is deceptive, because in every profession and more so in legal, the work is concentrated in the hands of lucky few.

54. It was strenuously urged by the learned counsel that the Legislature has proceeded to make the classification on the basis of area of operation and standing in the profession without taking into consideration the paying capacity or the income earned by the person and failure to take these things into consideration has resulted into grave miscarriage of justice. Now the argument is twofold; first that the capacity to pay is not, at all, taken into consideration and secondly the standing in the profession does not reflect the income which a person makes. Turning to the first aspect of the contention, let us consider whether it is necessary to take into consideration the capacity to pay in a taxing statute.

55. Mr. Sawant relied upon a decision of the Supreme Court in the case" of MR. KAMTA PRASAD AGGARWAL ETC. Vs. EXECUTIVE OFFICER, BALLABGARH and Another, , and argued that the tax on profession is not necessarily connected with income and in fact such tax is levied irrespective of the question of income. The Supreme Court was considering the provisions of Punjab Panchayat Samitis and Zilla Parishads Act which levied the professional tax. The main contention in the appeal before the Supreme Court was whether it is open for the State, Municipality, District Local Board or other local authorities to levy and recover professional tax to the extent of Rs. 250 separately or whether the provisions of and 276(2) of the Constitution of India restricts it to the total amount of Rs. 250. The Supreme Court while disposing of this question did observe that the tax on profession can be imposed if a person carries on profession and such tax on profession is irrespective of the income. There is nothing in the judgment of the Supreme Court to indicate that capacity to pay is not a relevant consideration in a taxing statute. The Supreme Court has made observations in a different

context and those observations cannot be imported to hold that in a taxing statute paying capacity need not be considered.

56. Mr. Paranjape and Mr. Dhanuka strongly relied on the decision of the "Supreme Court in the case of the The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . Mr. Justice Mukherjea speaking on behalf of the Court in para 43 of the judgment while considering the definition of tax observed that the feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay. The Supreme Court made this observation while considering the characteristics of the tax and the fee. The observations of the Supreme Court were relied on by the learned single Judge of the Calcutta High Court in the case of *Burmah Shell Oil Storage and Distributing Co. of India Ltd. Vs. Licensing Officer of Tamluk Municipality and Others*, . Mr. Justice Sinha, while considering the provisions of Bengal Municipal Act (15 of 1932), observed in para. 4 of the judgment that the object of taxation is to raise revenue and one of the ingredients of this power is that the tax is levied according to the paying capacity of the tax-payer. The learned single Judge of the Calcutta High Court has relied upon the decision of the Supreme Court in the case of the *Comnw., H.R.E. v. L, T, Swamiar*. The Calcutta High Court again considered this question in the case of *Seth Sukhlall Chandanmull Vs. A.C. Jain, Income Tax Officer and Another*, . The Bench comprising of Chief Justice K. C. Das Gupta and Mr. Justice Bachawat observed in para 4 of the judgment as under (p. 445) :

...It is unreasonable to say that the decision as regards how much is taken has nothing to do with the extent of what the taking is from. High authority has laid it down that one of the attributes of a tax imposed by the Sovereign is that it is correlated to the capacity to pay.

The division Bench approved of the observations of the learned single Judge in an earlier decision reported in *B. S. Oil Co. v. Tamluk Municipality*.

57. Mr. Paranjape also relied on the decision in the case of the *Seth Sukhlall Chandanmull Vs. A.C. Jain, Income Tax Officer and Another*, . The division Bench was considering the power of a Municipality governed by the Bombay Municipal Boroughs Act, 1925, to enhance the amount of tax. which it has already levied. The division Bench while considering the provisions of the taxation statute observed that so far as the taxation is concerned, classification is always permissible under the Constitution of India. Not only does the Constitution of India permit the taxation being related to capacity to pay but it is always desirable that it should be so related. These authorities clearly lay down that in a taxing statute capacity to pay must be taken into consideration. In the statute which is under attack in these petitions, the respondents Nos. 1 to 3 have not asserted that the capacity to pay is taken into consideration while classifying the professionals on the basis of area of operation and standing in the profession.

58. Mr. Paranjape has also relied on certain standard books on public Finance. The books on which he has relied are :

(1) Economic theory, Volume III (Public Finance) by Mr. M. V. Gokhale, Mr. K. K. Nayar, Mr. G. M. Rajarshi, (2) Public Finance (IIIrd edn. 1975), by Mr. S. P. Naik, (3) Public Finance (edn. 1974-75) by D. B. P. Tyagi, (4) Public Economics and Public Finance (IVth Edition 1972-73) by Andley & Sundharram, (5) The Economics of Public Finance (IIIrd edn. 1970) by Mr. Phillip E. Tayler.

59. The observations made by the authors do indicate that it is an accepted principle in Public Finance that a capacity to pay is not only a relevant consideration but an important ingredient. The contention of the petitioners that failure on the part of the Legislature to take into consideration the capacity to pay while making the classification and levying the rates of taxes has resulted into injustice will have to be accepted. Mr. Paranjape very strongly contended that a levy of the tax without taking into consideration the income and the sub-classification merely on the basis of area of operation and standing in the profession would produce unjust results. Mr. Paranjape urges that a person cannot be assumed to be earning in the profession merely because of the passage of time which he has spent in the profession. Mr. Paranjape high-lighted the cases of the petitioners which do indicate that in spite of the standing in the profession for a period of more than ten years in a Corporation area, the petitioner No. 1 is unable to earn more than Rs. 150 per month. Both Mr. Paranjape and Mr. Dhanuka urged that it is necessary to take into consideration the general conditions of the professional people in the legal field because it does indicate that a large majority of the persons engaged in the profession of law are not able, even, to make two ends meet, If the tax is levied upon persons who are unable to earn Rs. 100 per month, on the basis of their standing in profession and area of operation, it is difficult to appreciate how such basis has a rational relation to the objects sought to be achieved by the Act. Mr. Dhanuka, in this connection, strongly relied upon the resolutions passed by forty-one Bar Associations indicating inability to bear the burden of the tax. Apart from the cases of the persons engaged in the legal profession, item No. 2 covers the cases of other professionals and it is difficult to appreciate how in a case of a plumber, mere standing in the profession and area of operation would indicate the income which he is likely to earn. It is futile to urge that standing in the profession enables a man to earn more and more. The reality is otherwise. It is well known that it is not the mere standing in the profession but it is the ability and the skill which enables a person to succeed in the profession.

60. Mr. Paranjape, in this connection, relied heavily on the decision of the Supreme Court in the case of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . The case of Moopil Nair is a leading case and has been consistently followed in the subsequent decisions of the Supreme Court and it is necessary to closely consider the ratio of this case. The constitutionality of the Travancore Cochin Land Tax Act (15 of 1955) was challenged before the Supreme

Court in a petition under Article 32 of the Constitution of India. Under the Act, a land tax at a flat rate of Rs. 2 per acre was imposed on the lands situated in Palghat taluq of Palghat district. The petitioner was called upon to pay an amount of Rs. 50,000 per annum on the basis that the area held by the petitioner was about 25,000 acres. The petitioner had leased out his lands in an auction for an amount of Rs. 3,100 per year. The petitioner challenged the constitutionality and the validity of the Act on the ground that it violates Articles 14, 19 and 31 of the Constitution of India. It was urged that the Act does not have any regard to the quality of the land or its productive capacity and a tax at a flat rate of Rs. 2 per acre is proposed to be levied under the Act and, therefore, it imposes very unreasonable restrictions on the right to hold property. It was also urged that the effect of the Act is not to levy tax on land but to expropriate the private owners of the land without payment of any compensation whatsoever. The main contention urged was that the tax proposed to be levied on private property has absolutely no relation to the paying capacity with reference to the income which they could derive and, therefore, the whole Act is enacted with a view to confiscate the private property. The State of Kerala resisted the petition urging that the question of the amount of the income derived from the property sought to be taxed is wholly irrelevant because it was not a tax on the income but it was a tax on the property itself. The petition was heard by a Bench of five Judges and Chief Justice Sinha speaking on behalf of the majority consisting of Justices S. J. Imami, K. Subba Rao and J. C. Shah accepted the contention of the petitioner that the Act has no reference to income, either actual or potential, from the property sought to be taxed, and thus violates Article 14 of the Constitution of India. The majority decision observed in para. 8 of the judgment as under (p. 558):

...Ordinarily a, tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, there-tore, is levied with due regard to the incidence of the taxation.

61. The Supreme Court found that a levy of the tax at a flat rate without taking into consideration the productive capacity is violative of Article 14 of the Constitution of India. The judgment reported in *K. T. Moopil Nair v. State of Kerala* on which Mr. Paranjape has placed strong reliance is also approved in later decisions of the Supreme Court in the case of the State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, and in *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, . and in another decision of the Supreme Court in the case of the State of Kerala v. Haji K. Kutty A.I.R.[1969] S.C. 278.

62. Mr. Dhanuka also relied on the decision of the Supreme Court in the case of the *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, where the Supreme Court has observed that differences in treatment must be

capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. The minority judgment of Mr. Justice Shelat and Mr. Justice Grover has also approved the principle laid down in *K.T. Moopil Nair v. State of Kerala*. Mr. Paranjape also relied on the Full Bench decision of the Allahabad High Court in the case of *Sushil Chander Anand Vs. State of U.P. and Others*, . This was a case where U.P. Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam were under challenge. This case does not assist Mr. Paranjape because Section 4 of the Act clearly 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. The cases relied on by Mr. Paranjape and Mr. Dhanuka do establish that a taxing statute must take into consideration not only the paying capacity but also the amount of income which a property derives. There is no reason why this principle should not be made applicable in respect of a professional who is sought to be taxed.

63. Levy of tax on lands and buildings in disregard of its quality, nature and extent of construction, location, and possible rental income or yielding capacity is violative of Article 14 of the Constitution of India, because the base of tax is not mere holding of lands or buildings. Levy of tax on the basis of standing in profession in complete disregard to income earned by professional is also equally violative of protection of Article 14 of the Constitution. The contention that ratio of Supreme Court decision in case of lands and buildings has no relevance in case of professional tax, because the maximum amount in case of professional tax is Rs. 250 while in case of lands and buildings it is unlimited, is devoid of any merit.

64. Let us now consider what is the effect of the Legislature completely ignoring the capacity to pay so also the income derived by the person while levying the tax and levying a flat rate of tax on persons grouped together on the basis of area of operation and standing in the profession. Can it be said that the Legislature while sub-classifying the professionals on the basis of area of operation and standing in the profession was satisfied that such persons grouped together on the basis of standing have got the capacity to pay and can derive the income to bear the burden of the tax The return filed by respondents Nos. 1 to 3 does not indicate that the Legislature has taken into consideration anything save and except dividing the professionals on the basis of area of operation and standing in the profession. Paragraph 5 of the return is very eloquent on this point. After stating that it is only in the case of persons, engaged in employments who earn salary or wages that the tax amount payable by them is related to their income, it is stated ;

In the case of all other persons enumerated in the Schedule I appended to the Act the tax payable by them has no relation with the income earned by them from professions, trades or callings in which they are engaged.

65. The return gives no explanation as to why different mode is adopted in case of professionals covered in item No, 2 by adopting the test of standing in the

profession. As the return throws no light that anything was taken into consideration while adopting the method of standing in the profession, it must be held that framing of item No. 2 in schedule infringes the provisions of Article 14 of the Constitution. The result of the schedule is that unequals are treated as equals and thereby the rights guaranteed under Article 14 of the Constitution of India are violated.

66. In this connection, it is also necessary to remember that the Legislature has taken into consideration the capacity to pay and the income derived by the person, while levying the tax in respect of, at least, six classes under the schedule. In respect of class of persons who are salary and wage earners, there is a gradual scale which exempts those who are earning less than Rs. 400 per month and which levies tax at the rate of Rs. 20 per month on those who are earning Rs. 1,500 or more. In respect of dealers registered under the Bombay Sales Tax Act, the actual gross turnover is taken into consideration while levying the tax. The fact of actual gross turnover would indicate that not only the capacity to pay but also the income likely to be derived by such person was taken into consideration. In respect of both items Nos. 9 and 10, the cess is levied on the basis of number of workers employed either in a factory or in an establishment. The fact that the employer is in a position to employ certain number of workers clearly indicates that he has capacity to pay and he is deriving the income. In respect of item No. 13, the tax is levied on the basis of holding a number of vehicles. That is a clear pointer to the fact that the holder has a capacity to pay and also he is deriving the income. Item No. 15 which covers the class of individuals and institutions conducting chit funds is also another illustration indicating that the Legislature has taken into consideration the capacity to pay so also the income derived from such trade or calling. These facts are taken into consideration not for the purpose of holding that the Legislature cannot employ different methods in respect of different classes. It is undoubtedly true that different treatment is permissible to different classes but the fact that in respect of some classes, the Legislature has taken into consideration the capacity to pay and the income which could be derived and has completely by-passed or ignored these two ingredients while sub-classifying the professionals is considered, to find out whether the sub-classification of item No. 2 has any rational relation to the object sought to be achieved. From the discussion hereinabove, it is clear that the differentia or sub-classification of item No. 2 on the basis of area of operation and standing in the profession has no rational relation or nexus to the object sought to be achieved by the Act.

67. It was urged by Mr. Sawant, that income is taken into consideration only in case of salary and wage earners because it is "administratively convenient" to recover taxes from persons belonging to that class, while in cases of professionals, a separate machinery would be required to find out the true income and as that is not convenient, the basis of standing in profession is adopted. Mere inconvenience is no rational consideration to treat unequals as equals.

68. It was faintly suggested by Mr. Sawant that if tax liability is made proportionate to the net income of professional, then several potential assesseees in the lower income group would jump the net, resulting into loss of revenue. The submission has no force as it was never contended by the petitioners that tax liability should be made proportionate to income. The impost on gradual scale as in case of salary earners and flat rate after a particular slab is the claim of petitioners.

69. It is now well settled that the taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. It is also equally true that different kinds of properties may be subject to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It is undoubtedly true that in cases of taxing statute, there is wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. It can no longer be disputed that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack, and the burden is always on the person complaining discrimination. What is necessary to establish the burden is not merely the inequality but hostile unequal treatment. I am satisfied that the condition laid down by the Supreme Court that the differentia in classification must have a rational relation to the objects sought to be achieved by the Act is not at all satisfied in respect of item No. 2 and, therefore, it is necessary to strike it down as violative of Article 14 of the Constitution of India.

70. Mr. Dhanuka has faintly argued that it is necessary to strike down item No. 2 covering the class of persons who are professionals under Article 19(1)(g) of the Constitution of India. It was urged by the learned counsel that in a large number of cases the members of the legal profession may not be able to bear the brunt of the cess. The persons who have passed the age of sixty-five or seventy years and who are no longer engaged in vigorous and full time practice, says the learned counsel, may not be able to pay a tax of Rs. 250 per year and the result would be that they would be required to surrender their Sanads to the Bar Council. According to the learned counsel, the levy of such cess imposes unreasonable burden and prevents such persons from practising such profession. It is difficult to uphold this contention. It is not possible to strike down item No. 2 of the schedule on the ground that it violates Article 19(1)(g) of the Constitution of India. One cannot have the luxury of merely having his name on the roll and then complain that he is not desirous of practising profession and is not able to bear the burden, of the tax and, therefore, his right to practice has been taken

away. It is not possible to accept such contention and strike down the provisions of the Act.

71. Mr. Dhanuka, in this connection, has also relied on the fact that the State of Madhya Pradesh in the year 1966, the State of Assam in the year 1947, and the State of West Bengal in the year 1932 have levied tax on professions, trades and callings by taking into consideration the income earned by the person carrying on any profession, trade, and calling. Mr. Dhanuka submitted that it is for the first time that the State of Maharashtra has levied the tax on the professionals by taking into consideration the standing in the profession and no other States save and except the Karnataka and Gujarat have adopted almost identical provisions after the year 1976 when the Maharashtra State passed the legislation under challenge. Mr. Dhanuka pointed out that in Karnataka, subsequent amendment has exempted professionals, who have crossed the age of sixty-five, from payment of tax. The fact that in other States different method is employed is no consideration for the Court to strike down the validity of the Act though it may be a good ground for the Bar Council to make representation to the State Government.

72. As item No. 2 of Schedule I of the Act is found to be violative of Article 14 of the Constitution of India, it is required to be struck down. It is necessary to make it clear that legislative competency of the State to levy cess on the professionals is not in dispute but what is struck down is only item No. 2 which classifies professionals merely on the basis of their standing and area of operation. It is necessary to make it clear that it is open for the State Legislature to levy tax on professionals by classifying them on a rational basis, having nexus to the object sought to be achieved by the Act.

73. In the result, all the three petitions deserve to be allowed. The rule is partly made absolute and item No. 2 of the schedule is struck down but in the circumstances of the case, there will be no order as to costs in all the petitions.

74. In view of the difference of opinion expressed in the two judgments, the matter may now be placed before the Hon'ble the Chief Justice for reference to the third Judge.

75. (On a difference of opinion between Mr. Justice Deshpande and Mr. Justice Pendse the matter was referred to the third Judge, which came up before Mr. Justice S. K. Desai, who delivered the following judgement on October 4, 1978.)

S.K. Desai, J.

76. These three Special Civil Applications were heard by a division Bench of this Court consisting of Deshpande and Pendse JJ. in July 1978 and the judgment kept C.A.V. Ultimately two separate judgments were delivered both dated August 19, 1978. By his judgment Deshpande J. held that for the reasons indicated in his judgment the Rules were liable to be discharged in all the petitions and accordingly so ordered. On the other hand, Pendse J. held that all the three

petitions deserved to be allowed and in accordance with his judgment the Rule in each of the petitions was made absolute partly as far as entry 2 of Schedule I to the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (Act XVI of 1975), was concerned. This Act will hereinafter for brevity's sake be referred to as "the said Act". In view of the difference of opinion expressed in the two judgments, the matters were directed to be placed before me by the learned Chief Justice, and I have heard the matters on the points of difference only. In order to understand the points which are required to be resolved by my decision, some facts by way of background of the matter may be stated.

77. Under entry 60 of List II (State List) of the seventh schedule to the Constitution of India, the State Legislature are empowered to enact laws for imposition of taxes on professions, trades, callings and employments. Article 276 makes special provision in respect of such taxes, but this provision is not restricted to laws enacted by State Legislatures since such taxes could be imposed by municipalities, district boards, local boards and other local authorities also. For the first time in the State of Maharashtra the Legislature has enacted the said Act, viz; the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, extending to the whole of the State. As the preamble to the Act indicates, it was for the benefit of the State and particularly for the purpose of raising additional resources needed for implementing the Employment Guarantee Scheme of the State Government and to provide for establishment of the employment guarantee fund and connected matters. The levy and charge of tax was provided by the said Act u/s 3. Sub-section (2) of Section 3 provides that every person engaged in any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of Schedule I to the Act shall be liable to pay to the State Government the tax at the rate mentioned against the class of such persons in the third column of the said schedule. However, the first proviso to the section fixed an yearly maximum limit of Rs. 250 in respect of such tax. The second proviso with which we are not concerned, pertains to the residuary entry 20 in Schedule I. Before turning to the schedule, I may just draw attention to the provisions contained in Sections 28 and 29 of the said Act. As stated earlier, such taxes could be imposed and were in fact being imposed by various municipalities. But by Section 28 of the said Act the enactments specified in the second column of Schedule II to the said Act were amended in the manner and to the extent specified in the third column of the said schedule; and if Schedule II is perused, it is found that the power of imposition of such tax has been taken away by the amendments from various municipal bodies, village panchayats and zilla parishads. Section 29 provides for grants to be made to local authorities to compensate them for the loss of revenue occasioned by reason of the amendments made by Section 28.

78. It now becomes necessary to turn to Schedule I to the said Act which has been the bone of contention between the parties. Schedule I to the Act provides for rates of tax on professions, trades, callings and employments. The schedule

has provided the class of persons who come within the range of such taxation and there are twenty such classes, the last viz., entry 20 being the residuary class. The second proviso to Section 3 provides for classes of persons as are to be included in entry 20. We are principally concerned with entry 2 and it will be necessary before considering the rival contentions in respect of this entry, to take a bird's eye view of the entire schedule providing for the rates of taxes to be levied on different types of persons.

79. Entry 1 in Schedule I refers to persons who are salary and wage earners. The rate of tax provided in Schedule T for this class is on a graded scale, and persons whose monthly salary or wages are less than Rs. 400 are totally exempt from such tax. The rates of tax thereafter go on increasing and it is finally provided that persons whose salary (or wages) amount to Rs. 1,500 or more per month, would be required to pay such tax at the rate of Rs. 20 per month.

80. Out of the remaining eighteen entries (excluding entry 20) the entries bearing serial Nos. 3, 4, 5, 6, 7, 11, 12, 14, 16 and 17 may be grouped together as in respect of these persons the schedule provides for a flat rate of tax. It may be mentioned that even in respect of entry 20 a flat rate of tax is provided. These rates, however, are not identical and we find that for some entries the flat rate of tax is Rs. 250 per annum whereas for other entries or other sub-entries the quantum of tax has been fixed at Rs. 150 per annum. One of the entries viz., entry 14 is of some interest to us because in that entry a differential rate is provided for money-lenders licensed under the Bombay Money Lenders Act, 1946, depending, upon whether they are functioning in a Corporation area or non-corporation areas the flat rate for the former areas is Rs. 250 per annum whereas that for the latter area is a lower rate of Rs. 150 per annum.

81. We will now survey entries, 8, 9, 10, 13 and 15. Entry 8 of the schedule provides for tax to be levied on dealers registered under the Bombay Sales Tax Act, 1959, and three rates are prescribed depending upon their annual gross turnover; as the annual gross turnover increases, the rate of tax increases from Rs. 50 per annum to Rs. 250 per annum,. However it is clear from the graded scale prescribed that such dealers whose annual gross turnover of all sales or of all purchases is less than Rs. 50,000 are totally exempted from payment of such tax. Entry 9 provides for occupiers of factories as defined in the Factories Act, 1948, who are not dealers covered by entry 8. In respect of such occupiers of factories the rate of tax is made dependent upon the number of workers working- a lower rate of Rs. 150 per annum where there are fifteen workers or less and a higher flat rate of Rs. 250 per annum where there are more than fifteen workers working. As in case of such establishments the number of workers may vary during the year, an explanation is added providing for calculating the average number of workers for the purpose of applying the rate. Entry 10 provides for employers of establishments as defined in the Bombay Shops and Establishments Act, 1948, who again are not covered by entry 8. Total exemption is given to such establishments where there are no employees and in other cases where the

establishment has employees three flat rates are provided depending upon the number of employees; as the number of employees increases, a higher tax is prescribed. Entry 13 of the schedule provides for persons who are holders of permits for transport vehicles granted under the Motor Vehicles Act, 1939, which vehicles are used or adopted to be used for hire or reward. The tax varies with the type of vehicle and the number of vehicles subject to the maximum indicated viz., Rs. 250 per annum. Finally, we have entry 15 providing for individuals or institutions conducting chit funds and two differential rates are provided, depending upon the value of the security required to be lodged by such individuals or institutions with the Registrar u/s 13 of the Maharashtra Chit Funds Act, 1974.

82. We finally come to entry 2 of the Schedule I which is the principal entry in this schedule with which we are principally concerned. This entry covers a class of persons who may be broadly described as professionals and four categories are indicated, of which category (a) covers legal practitioners including solicitors and notaries public. The entry thus is not restricted only to legal practitioners but covers:

- (a) legal practitioners including solicitors and notaries public;
- (b) Medical practitioners including Medical consultants and Dentists;
- (c) Technical and Professional consultants, including Architects, Engineers, R.C.C. Consultants, Plumbers, Tax Consultants, Chartered Accountants, Actuaries and Management Consultants;
- (d) Chief Agents, Principal Agents, Special Agents, Insurance Agents and Surveyors or loss assessors registered or licensed under the Insurance Act 1938.

83. In case of all such persons or professionals, as we may call them, the rate of tax is fixed with reference to the area as well as with reference to standing. These rates prescribed by entry 2 may now be set out:

Where the standing in the profession of any of the persons mentioned above-

(A) in any Corporation area is (i) less than two years ... Nil (ii) two years or more but less than five years ... Rs. 150 per annum. (iii) five years or more ... Rs. 250 per annum. (B) In any other area in the State is- (i) less than two years ... Nil (ii) two years or more, but less than five years ... Rs. 50 per annum. (iii) five years or more, but less than ten years ... Rs. 150 per annum. (iv) ten years or more ... Rs. 250 per annum."

84. In the three petitions which were disposed of by the division Bench of Deshpande and Pendse JJ. as stated earlier, the petitioners had, inter alia, submitted that the entire Act suffered from the vices of class legislation and discrimination. In particular, a grievance has been made of entry 2. As far as the general challenge to the Act was concerned both the learned Judges have agreed that there is no substance in the challenge to the Act in its entirety or generally,

but they differed as far as entry 2 is concerned. It is unnecessary to refer to the portions of the two judgments on the points on which there was agreement between the two learned Judges. But it will be necessary to indicate briefly the several points of difference which were restricted to as stated earlier, to entry 2. It was strongly urged before the division Bench on behalf of the petitioners that equality before law amongst legal practitioners could be ensured only by basing or relating the tax payable by them to their income from the profession and any other basis of their classification by reference thereto was bound to be violative of Article 14 of the Constitution. This was negatived specifically by Deshpande J. He also rejected the submission that the ability to pay on the part of the assessee was an indispensable ingredient of the tax enforcement machinery. According to him, further, the assumption that relating of the tax with the net or gross income of the assessee could ensure equality also did not appear to be well founded. It is true that these observations are to be found in the portion of the judgment of Deshpande J. dealing with the general challenge to the Act, but they have a bearing on his conclusion with regard to the specific challenge in respect of entry 2. After making these general observations, Deshpande J. considered whether the area and the years of practice in the profession could furnish an acceptable basis for classification and fixing rates of tax. In his view the Corporation areas would furnish better opportunities. It may be clarified at this juncture that the definition of the expression "Corporation area" is to be found in Section 2(b) of the said Act, and it appears to be the agreed position that the cities covered by this definition would be Bombay, Nagpur, Sholapur, Pune and Kolhapur. Deshpande J. also accepted that it would take some time before a person gets foothold in the profession, acquires confidence and starts getting clientele. In his view, therefore, standing in the profession also could be regarded as having some reasonable connection with the rate of tax to be charged. According to him the area and years of practice ordinarily can be an index of a person's prospects and potentialities in the profession, though in some individual cases the test may fail. Accordingly, therefore in his view it was not possible to hold that these factors could have no nexus with the basis of levy of the tax. In this view of the matter he did not accept the submission that the levy of tax on such criterion was irrational or in any other way violative of Article 14 of the Constitution. Deshpande J. rejected the contention that the sub-classification provided for under entry 2 of Schedule I to the said Act was violative of either Article 14 or Article 19 of the Constitution. He also repelled the contention that the basis of tax provided thereunder was irrational or arbitrary or amounted to hostile discrimination.

85. Before turning to the judgment of Pendse J. and ascertaining the points of difference, it may become pertinent to indicate the return filed on behalf of the State.

86. The return is filed on behalf of the State by the personal assistant to the Commissioner of Sales tax. According, to this return, it was only in the case of persons engaged in employments who earn salary or wages that the tax amount

payable was made relatable to their income and in case of other persons, according to the return (para. 5) the tax payable by them had no relation with the income earned by them from the professions, trades or callings in which they were engaged. It is further submitted in the said return that the tax was a tax not on income but on professions, trades and callings, and accordingly the question of income was wholly irrelevant. As far as entry I (salary and wage earners) was concerned, the submission was that the method selected for them was to levy tax on their income since it was a relatively convenient and rational method of levying the tax. It was categorically stated in para. 8 that for the purpose of the tax levied under the Act income was not a relevant factor at all and an explanation was offered as to why differential rates were prescribed for the Corporation areas and non-Corporation areas; the explanation was that the urban areas were generally more prosperous than the rural areas and that there was a presumption that professional persons in the Corporation areas are better placed compared to those outside such areas. There is total absence in the return as regards the other basis of the differential rates viz. the standing.

87. Before adverting to the authorities cited at the Bar and the propositions canvassed for acceptance, a brief digression may be made as regards the position pertaining to such taxes in other States in India. A compilation has been handed over which gives details of similar taxes levied in the States of Madhya Pradesh, Karnataka, Assam, Gujarat and West Bengal. The Madhya Pradesh Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam, 1966 (No. 25 of 1966) provides for uniform rates of tax on traders, professionals and people in employments, the rate being dependent on the respective income from professions, trades, callings or employments, with a further total exemption in respect of those whose income is below Rs. 8,000. A passing comment may be made that the State of Madhya Pradesh has not not found any great administrative difficulty presumably in adopting a uniform basis and a basis of levy of such tax based on income. Either it regards the assesseees in Madhya Pradesh as more honest or the administration as more efficient.

88. A similar scheme appears to be followed in Assam, under the Assam Professions, Trades, Callings, and Employment Taxation Act, 1947. There is also uniformity of treatment for traders, professionals and employees. The Act makes clear that the levy of tax at varying rates on a graded scale is to be on the gross income from the trades, callings, professions or employment and the only differential to be found is between individuals and Hindu undivided or joint families.

89. I was also referred to the provisions contained in the Bengal Municipal Act, 1932 under which Section 182 makes a provision for levy of tax on professions, trades and callings. We find in this enactment a schedule in which there are different provisions for (1) companies, associations or bodies of individuals exercising professions, trades or callings having paid-up capital and for these different rates of tax are provided rising with increase in the paid up capital.

90. Subsequently a lower rate was prescribed for statutory corporations set up by the Government which was a flat rate irrespective of the paid up capital of such statutory corporations, (2) Merchants bankers, money-lenders, wholesale traders, theatre owners, etc., and for these varying rates of tax were prescribed on the valuation of the place of their business; and (3) Commission agents, brokers and other professionals including lawyers, medical practitioners, for whom varying rates of tax were prescribed dependent upon their income, but the differentials were limited to three only. It may be pointed out that in the last category even for these persons on whose income no Income Tax was payable a very small tax of Rs. 5 was chargeable under these provisions.

91. Turning to the levies imposed by the States of Karnataka and Gujarat, we find that the operative enactments are of 1976, i.e., subsequent to the Maharashtra Act XVI of 1975, and the schedule in each of these enactments is substantially based upon the schedule under consideration before me with slight differences. As far as entry 2 in the schedule in both the enactments is concerned, we find a differential based on the area and in the Karnataka enactment a higher rate of tax is leviable in the Mangalore Urban Agglomeration and within the municipal limits of district headquarters towns, whereas in Gujarat there is a distinction made between cities and municipal boroughs, the latter category being further sub-divided according to the respective population. The differential basis of standing is retained in both the enactments and is similar to the provisions in entry 2 of Schedule I of our Act. There is, however, a very salutary provision in the Karnataka Act, which totally exempts persons in three classes at serial Nos. 2, 3 and 7 who have attained the age of sixty-five years.

92. Thus it would appear that the States of Madhya Pradesh, Assam and West Bengal have sought to co-relate the levy of such tax with the income earned by the professionals, whereas the States of Karnataka and Gujarat, following the example of Maharashtra, have ignored the income earned but have co-related the tax with the area of operation and the standing of the professional.

93. Before me the principal arguments on behalf of the petitioners were urged by Mr. Dhanuka, appearing for the Bar Council of Maharashtra. He first drew my attention to the affidavit filed on behalf of the Bar Council by its secretary, to which affidavit is annexed the Bar Council Resolution No. 90 of 1975 as annex. 1; a list of forty-one Bar Associations in the State who have passed similar resolutions has been annexed to the said affidavit as annex. 2. My attention was drawn also to the specific cases of the petitioners in Special Civil Application No. 2627 of 1976, both of whom were aged about sixty-five years in 1976 and who have contended with considerable force that the levy even at the fairly low flat rate operates harshly qua them. These affidavits would seem to establish that the assumption that an advocate with a longer standing in a Corporation area must necessarily earn sufficiently to bear such tax or that such advocate must earn more than an advocate with a smaller standing in a non-Corporation area are not well founded. Equally fallacious would seem to be the assumption that

the general impact of the tax is very slight. In certain cases, as is amply borne out by the case of the two petitioners in Special Civil Application No. 2627 of 1976, the impact of the levy appears to be so onerous as to compel them to cease practice or at least give serious thought to doing so. My attention was drawn by Mr. Sawant on behalf of the State to administrative directions given by the Commissioner of Sales tax (who is also the administrative head as far as this tax is concerned) under which as far as professionals are concerned, the tax was directed to be levied on those who were actively engaged in the profession and not from those who were merely shown on the rolls of the respective Bar Councils. To ensure this administrative directions appear to have been given to the effect that if affidavits were filed by such persons stating that they were not practising, they ought not be subjected to the levy of tax. Such directions do go to some extent in lessening the rigour of the tax but would not remove its harsh impact in case of such persons in the position of the two petitioners in Special Civil Application No. 2627 of 1976 who may be engaged in the profession but. who may be having a restricted practice because of advanced age or because of the late age at which they had entered the profession or because of their ill-health or other similar factors.

94. It may be noted here that the harshness or otherwise of a tax has no direct relevance to the question of its vires, particularly in respect of the challenge under Article 14 of the Constitution. As far as this challenge is concerned, the challenge will have to be accepted or rejected depending upon the view taken as to whether there is any hostile discrimination practised against a class which is sought to be governed by entry 2.

95. At this juncture it would be appropriate, before adverting to the authorities cited at the bar, to summarise briefly the contentions advanced on behalf of the learned counsel for the Bar Council, who led the attack on the statutory provision under challenge.

96. It was submitted by him that entry 2 of Schedule I to the said Act offended the guarantee of equality enshrined in Article 14 of the Constitution on the following broad grounds: (1) The capacity to pay of the person liable to pay the tax was an important and relevant factor for the levy of tax. In the instant case, according to him, the respondent State had erroneously considered this relevant factor as irrelevant. It was submitted further that since there was no co-relation between the criteria prescribed in the entry and the paying capacity, it would follow that the criteria prescribed were arbitrary, irrational and therefore liable to be struck down. (2) The criteria of standing in the profession was totally irrelevant and must be deemed to be arbitrary; it has no connection or nexus with the object of the Act. The submission was based on the fact that there is a vast disparity in income or paying capacity amongst the members of the profession of the same standing and in the same area and such yard-sticks, therefore could not be properly adopted as yard-sticks for evaluation of the paying capacity or even for proper rational presumptions as to potential income

of the assesseees. It was accordingly submitted that such irrelevant yard-sticks adopted would necessarily result in inequality and would, therefore, be violative of Article 14. (3) It was submitted that even assuming that the profession tax need not necessarily have a co-relation with the paying capacity or income earned from the professions, etc, (although it may be desirable to do so), even then such a basis could not be ignored in case of professionals when the same is adopted directly in case of salaried persons and somewhat indirectly in case of dealers, chit-fund companies, truck-owners, banks etc. If in case of these persons the levy of tax is co-related with their actual income or presumed income or earning capacity, then there was no warrant for adopting any other criterion for professionals. (4) In any case it was submitted that the respondents have failed to explain the difference in the treatment between professionals and others as to why paying capacity is ignored in case of professionals and the standing and the area of operation adopted as criteria for the levy. Emphasis was made that as far as standing was concerned, there was not even an attempt to explain this criteria or indicate the reason for its adoption in the return filed on behalf of the State. (5) Finally, a broad submission was made to rebut a possible argument that could be advanced on behalf of the State. The possible argument that was sought to be rebutted was that the Court must base its judgment bearing in mind the fairly low scale of the levy since a maximum limit of Rs. 250 per annum is prescribed. It was submitted by the learned counsel for the Bar Council that an assumption that this rate must be regarded as light was not warranted in view of the specific resolutions passed by the various Bar Associations, and I was referred to the resolution of the Pune Bar Association in this connection. In the resolution it is noted that the levy at the highest flat rate was found onerous for 80 per cent, of the lawyers in the Corporation area whereas it may be regarded as not so onerous only for about 20 per cent, of the lawyers on the Bar Council roll practising in that area.

97. Before advertng to these propositions and considering their soundness or otherwise, a brief reference may be made to some of the authorities cited at the bar, though it must be clearly indicated that on the points under consideration there is no direct authority. However, in a number of authorities the Supreme Court had occasion to refer to such taxes and it will be appropriate to refer to these decisions. Similarly in a number of High Court decisions some aspects of similar taxes have come to be considered and reference to these decisions will be in order. The discussion to be found in these cases may prove helpful in arriving at the proper decision on the points under consideration.

98. To turn to the decisions of the Supreme Court, the Supreme Court came to consider the levy of professional tax under the Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961) in MR. KAMTA PRASAD AGGARWAL ETC. Vs. EXECUTIVE OFFICER, BALLABGARH and Another, The imposition of profession tax by Panchayat Samitis u/s 76 of the said Act was under consideration and it was held that such imposition of tax was not illegal on the ground that it amounted to double taxation. The challenge by way of double taxation was based on the fact

that a similar professional tax on a graded scale subject to the maximum limit of Rs. 250 per annum had been and was being collected by the State of Haryana also. The challenge was repelled and whilst negating the contention which was the basis of the challenge, it was observed "Such a tax on profession is irrespective of the question of income" (para. 9). The point has not directly come up for consideration before the Supreme Court and the observation to be found in para. 9 of -the report must not be regarded either as part of the ratio or even as obiter. They are observations made in passing and though entitled to respect as observations made by the Supreme Court, they are not necessarily binding.

99. It may be mentioned in passing that in an earlier decision of the Supreme Court in which tax on profession was not at all under consideration, we find a somewhat similar approach and in this connection reference may be made to *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, . This decision may be referred to in greater detail later on as it lays down good guidelines for applying Article 14. But at this juncture reference may be made briefly to the observations to be found in para. 8 of the report. The State of Kerala had imposed additional taxes on certain plantations within that State and a formula had been prescribed in the schedule for the levy of tax. This somewhat complicated formula was based on different types of cash crops grown, but in respect of each type of specific plantation, e.g. tea, etc., a uniform formula was provided for the entire State. It was contended that such uniformity for all plantations irrespective of the area in which they are situate, the climatic conditions, the productivity of the soil, the resultant crop and profitability must result in inequality. In this connection it was observed (p. 1136):

...It may also be conceded that the uniform tax falls more heavily on some plantations than on others because the profits are widely discrepant. But does that involve a discrimination"? If the answer be in the affirmative hardly any tax direct or indirect would escape the same censure for taxes touch purses of different lengths and the very uniformity of the tax and its equal treatment would become its undoing. The rich and the poor pay the same taxes irrespective of their incomes in many instances such as the sales-tax and the profession tax etc.

100. In this case it is obvious that profession tax was not at all under consideration and the observations were merely made in passing. But in passing *Hidayatullah C. J.* did express clearly though casually that in his opinion profession tax was similar in its incidence to such indirect taxes as the sales tax, which has no co-relation with the paying capacity of the purchaser and would attract uniform levy on the items of purchase.

101. At this juncture it may be pointed out that the essential base of such a tax in the opinion of the Taxation Enquiry Commission (1953-54) has been set out in a decision of the Kerala High Court in *T.K. Abraham and Others Vs. State of Travancore-Cochin*, , para. 25 According to the said High Court, the base of profession tax is either the occupation itself or the income derived therefrom. It

then goes on to quote an extract from the report of the Taxation Enquiry Commission, which extract reads:

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

102. "A Full Bench of the Allahabad High Court came to consider such a tax imposed in the State of U.P. (U.P. Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam (21 of 1965)) in *Sushil Chander Anand Vs. State of U.P. and Others*, The Adhiniyam was challenged (as far as Article 14 was concerned) on the ground that it was discriminatory in nature in as much as it excludes agriculturists and members of Armed Forces, and that there was no rational basis for such exemption. Further challenge was made on the contention that the levy was based not on net income but on gross income. The two-fold challenge was negated by the Allahabad High Court. In paras. 38 and 39 of the report (portion of the separate but concurring judgment of Beg J) we find reference to two earlier Allahabad decisions where observations are to be found as regards such taxes. These observations seem to suggest that in the view of the earlier Benches the tax on trades, professions or callings was to be distinguished from a tax on income and perhaps could be regarded as Income Tax and beyond the competence of the State Legislature if it was graduated and directly co-related with the income earned by the assessee. In this connection the obvious distinction existing between the tax on income and such tax was pointed out by Srivastava J. in *Western U.P. Electric Power and Supply Company Ltd. Vs. Town Area and Others*, , in the following words :

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. (p. 327).

103. Before the Full Bench of the Allahabad High Court, it was contended that the basis of the Adhiniyam which co-related the levy of tax with gross income may amount to taxing individuals who had no income whatsoever in the sense in which the term "income" had been used under the law relating to Income Tax; and this contention was repelled by Beg J. in the following words (p. 333):

...A person having no net income may still be taxed if he has a profession, calling or employment.

104. It was conceded that hardship may arise in some cases; but it was observed that if the legal basis of the" tax was net income, on the ground of hardship which may arise in hypothetical cases it was not possible to hold the Adhiniyam illegal or void for the reason of such hardship. It was then stated (p. 333):

...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.

105. Reference may be made also to Seervai's Constitutional Law of India, second edn., (vol. II, p. 1276), where the learned author deals with the nature of a tax on professions. After dealing with the legislative history of the constitutional provisions permitting imposition of such, taxes, i.e., Section 142 of the Government of India Act, 1935, and Article 276, it is stated (p. 1277):

...It is submitted that it is not a correct inference from the language of Section 142A and Article 276, that "a tax on professions is a tax on income. These provisions deal with a mode of imposing a tax on professions which, if not limited, would have made it indistinguishable from a tax on income. But in law, they are distinct and separate imposts. A tax on income can be imposed only if there is income. A tax on professions can be imposed if a person in fact carries on a profession, etc., and irrespective of the question of income.

106. The levy of a similar tax in West Bengal came to be considered by a single Judge of the Calcutta High Court in *Burmah Shell Oil Storage and Distributing Co. of India Ltd. Vs. Licensing Officer of Tamluk Municipality and Others*, . Under Schedule IV to the Bengal Municipal Act (15 of 1932) under consideration the trade tax which was levied on companies was graduated, depending upon the paid-up capital of the company. The argument which was advanced before the Calcutta High Court and which was being considered was that since the object of imposition of trade tax was to tax a trade and not the quantum of a trade, the graduated levy was not permissible and only a uniform levy ought to have been imposed. This argument was not accepted and it was held that the graduated table was permissible and not necessarily discriminatory. It was in this connection that the Calcutta High Court made the following observations (p. 398):

...The object of taxation is to raise revenue, and one of the ingredients of this power is that the tax is levied according to the paying capacity of the tax-payer.

107. The learned single Judge of the Calcutta High Court also referred in this connection to and derived support from the decision of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . The learned single Judge thereafter observed that a company with larger paid-up capital could be presumed to have the capacity of paying more taxes and therefore there was no discrimination against the petitioner company, whose challenge to the graduated scale of tax was rejected. This decision of Sinha J. was referred to with approval by a later division Bench of the Calcutta High Court in *Seth Sukhlall Chandanmull Vs. A.C. Jain, Income Tax Officer and Another*, where it was observed as follows (p. 444):

...An objection as regards the validity of trade tax levied under the Bengal Municipal Act was also raised in this Court before Sinha J., in *B. S. Oil Co. v. Tamluk Municipality*, on the ground that as the tax was on a graduated scale, it

offended against the rule against discrimination. Sinha J. pointed out that one of the ingredients of taxing power was that the tax is levied according to the paying capacity of the taxpayer, and so the imposition of a higher tax from a company which has greater paid-up capital, and therefore presumed to have the capacity of paying more taxes, than a company which has a less paid-up capital and might be expected to have a lesser capacity for paying taxes, did not amount to discrimination.

108. We need not advert further to this decision as it was concerned with the levy of Income Tax in which different principles may apply.

109. Before dealing with the two principal submissions of Mr. Dhanuka, which are vital, reference may be made to a Bombay authority which was cited in connection with the question whether taxation ought to be co-related to capacity to pay. That was a decision of a division Bench of this Court in *Cantonment Bd., Poona v. Western India Theatres* [1953] 56 Bom. L.R. 45, where it was observed that not only does the Constitution permit taxation being related to the capacity to pay, but it is always desirable that it should be so related.

110. Now, the question before me is not whether it is desirable that the levy of tax should be related to the capacity of the assessee to pay but whether there was a legal obligation on the State to provide for such co-relation; and if such co-relation was not expressly or even indirectly provided whether the levy of tax would be violative of the Constitution and in particular of the protection of equality conferred by Article 14 of the Constitution. This argument was supported by reference to the co-relation made in entry 1 to capacity to pay of the salary or wage earners, and it was submitted that if the tax levied on employees and salaried persons is co-related with the capacity to pay, then there was no warrant for not providing for such co-relation in case of professionals and this per se would amount to discrimination. The further grievance of the petitioners and of the Bar Council pertaining to the criteria adopted under the statute was based upon the basic premise that the levy of tax under the statute must necessarily have a co-relation with the capacity to pay.

111. Before dealing with the two criteria provided for under entry 2 of Schedule I to the said Act, it becomes necessary to examine the said contention which goes to the root of the matter. The approach to the criteria will be obviously dependent upon whether the petitioners' principal contentions are acceptable or not.

112. A number of authorities of the Supreme Court were cited at the Bar in connection with the approach to be adopted by the Court whilst dealing with the complaint that the provisions of a statute were violative of Article 14 of the Constitution. It is unnecessary to discuss these authorities in any great detail as the principles appear to be well settled; these are ? (1) there is a presumption of constitutionality and (2) that the Court must permit some discretion in the matter of classification to the Legislature, particularly in matters of taxation. To

reiterate, however, whether or not there is any discrimination and if so whether it is a hostile discrimination as understood by constitutional authorities which discrimination alone will violate the provision of equality, will depend upon the basic premises which are required to be examined and adjudicated upon. It was conceded that a tax on professions, trades, callings and employments was not a tax on income; but it was contended with vehemence that such a tax must necessarily be co-related to the capacity of the assessee to pay. In the judgment of Pendse J. reference has been made to various authors on Economics and extracts from certain works have been submitted before me. It is unnecessary to go to these authorities because what they are indicating, if at all, is a consideration, something which is desirable and what we have to consider is something which is postulated as a matter of legal obligation. It is easy to perceive that all taxation is not necessarily co-related with the capacity to pay of the person on whom the incidence of tax falls. All indirect" taxation is in a way not directly co-related with the capacity to pay although a wise State will endeavour to bear this in mind whilst casting its tax net, exempting all items of necessity and common use and levying higher rates of indirect tax on what it considers items of luxury. However, if there is some State which in order to raise resources for admittedly desirable purposes imposes such taxes in such a manner which may hit hardest the poorer sections, can such a tax be legally assailable on the ground that it is violative of any constitutional safe-guard or of Article 14 as it ignores the salutary desideratum of capacity to pay? Progressive rates of Income Tax also have been justified on the basis of co-relation with the capacity to pay. The object of a tax is to raise resources. One of the principal modes of such raising of resources to-day is by levy of such direct taxation. If direct taxation were to be uniform, such uniformity would be oppressive to those earning less and that is the rationale behind the progressive rates of taxation. But we are not concerned with what is desirable but only with what is legally not permissible. It is true that as far as the taxes or revenue which have been held to be directly co-related with the paying capacity of the assessee are concerned, it has been observed that equality OT uniformity will lead to inequality. This was held by the Supreme Court as far back as in the case of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, It was one of these cases, in the opinion of the Supreme Court where the lack of classification itself led to inequality. This case has been regarded as one of the leading cases on this question and the principles therein enshrined have been later on followed and applied. It is true that in a later case viz. Dantuluri Ram Raju and Others Vs. State of Andhra Pradesh and Another, the uniform rate of cess prescribed for each division under the Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act (11 of 1968) was upheld. But this was on special considerations indicated in that judgment. The levy was in the first place a cess. The object of the Act was to raise funds for the implementation of schemes to secure protection of the lands in the deltaic area from ravages of the floods. Bearing in mind this background the levy of the cess at a uniform rate for each grade of land in a division was not considered to offend the principle of equality.

113. Thus land revenue and similar levies as perhaps direct taxes on income, must be held co-relatable with the paying capacity, and if these are levied at flat rates without special reasons therefor, the principles in the above cases may be applicable and the levy may perhaps be properly regarded as violative of the protection of equality conferred by Article 14 of the Constitution of India. Will the identical conclusion be applicable to the other types of levies which are not comparable with the two above referred to? The various observations earlier indicated would seem to suggest that the tax on professions is a tax simpliciter on the professionals engaged in such professions, such as a tax on goods (sales tax, excise, customs) which need not necessarily be related to the paying capacity of the persons concerned. One word of caution may be added. In making these observations one has to bear in mind the present limit to the levy of tax as also the actual levy of tax. Different considerations may apply where the tax is fixed at such high a figure that it is possible to say that imposition of such flat rate of tax irrespective of the paying capacity, i.e., income would amount to an unreasonable restriction of the right of a person to carry on trade or profession or calling. To-day, we have the limit of Rs. 250 per annum for such tax. Bearing in mind that limit and the provisions contained in Sections 28 and 29 of the said Act, it may not be possible to say that the tax which may prove to be onerous even in a fairly large number of cases will amount to such obligation as will be equivalent to unreasonable restriction on the right of these persons to carry on their trade, profession or calling.

114. We have disposed of then and rejected the first branch of the argument advanced on behalf of the petitioners and the Bar Council that the tax must necessarily be co-related with the paying capacity of the persons liable to pay the tax. It is impossible to accede to this argument. This is not to say that such co-relation is not desirable. It may be that the State is aware of the desirability; but bearing in mind the fairly low rate of tax it has decided that for the time being the necessary desideratum is to be ignored and a flat rate is imposed. If there is occasion in future to revise the maximum limit upwards, it is hoped that the necessary desideratum will be borne in mind by the State. As stated earlier, it is not the case of the State that it is administratively inconvenient to co-relate the levy of tax on professionals with their paying capacity. It has been found administratively convenient in at least three other States, and there is no reason why such co-relation cannot be provided for in future and particularly if there is any upward enhancement of the tax.

115. This however does not dispose of the argument of the petitioners totally. The second contention which also goes to the root of the matter is that it was incumbent on the State Legislature when it provided for such co-relation in case of salary and wage earners to provide for such co-relation also for the professionals. It was submitted that by reason of its failure to do so, the State has practised hostile discrimination against this class. Now I have earlier analyzed the broad features of Schedule I to the said Act. I have indicated that such direct co-relation is only provided in case of entry 1 for salary and wage

earners, and to a limited extent indirectly in case of entries 8 (dealers), 9 (occupiers of factories), 10 (employers), 13 (holders of permits for transport vehicles) and 15 (individuals or institutions collecting chit funds). If such co-relation is provided for these classes, was it legally incumbent on the State to provide for such co-relation directly or indirectly for all the other classes? In my opinion, under the legislative entry the State could have imposed taxes separately for employments, trades, professions and callings. It was not incumbent on the State to have one law for all the categories and have one criterion for all of them either in the one law which in fact is passed or in such separate laws as could have been separately enacted in theory. It is legally permissible for the

116. State to totally exempt the salary or wage earners if it so deems fit. Similarly, as far as the remaining three categories are concerned, it is clear that all the possible categories of trades, professions, or callings will not be included since entry 20 is not a general residuary entry but will only encompass such classes of persons as may be specified by the State Government by notification in the official Gazette from time to time (see the second proviso to Section 3 of the said Act). It is to be borne in mind that this is a provision for taxation. A wide measure of latitude is required to be granted in such matters to the State to tax or not to tax, and it has been held in a number of authorities, which need not be referred to, that a legislation for imposing taxes cannot be assailed on the ground that there is omission to include in the tax net certain items or certain persons who may be fairly identically situated as the things or persons on whom the levy has fallen. The classification between salary earners and wage earners on the one hand and other classes included in entries 2 to 20 on the other is provided for in the legislative entry itself and different treatment to the two classes is permissible; and it cannot be accepted that if salary or wage earners have to pay a tax co-related with their salary or wages, the same criteria must necessarily be adopted for the other classes provided for in the schedule.

117. Thus the argument advanced on behalf of the petitioners that the levy of the tax must be co-related for the professionals encompassed in entry 2 to their income or paying capacity has to be rejected.

118. It has to be conceded that if my view was different viz., that the levy or incidence of such tax is to be co-related with the paying capacity, then the two criteria prescribed by the State viz. (i) the area of operation of the professional and (ii) standing, would be vulnerable to a large extent as these two criteria do not have necessarily a nexus with the paying capacity. But once consideration of paying capacity is settled and the argument of necessary co-relation between the tax and the paying capacity rejected, then there is not much difficulty in assessing the two criteria prescribed by the Legislature for differential rates of tax in entry 2. It is true that in the return explanation has been given only in respect of one of these two criteria viz., the area of operation. It is now well settled that different rates of taxes can be prescribed for different geographical

areas. Even as far as one city is concerned, different rates of tax can be levied for different localities of the city. Reference may be made in this connection to the decision given by a division Bench of this Court in the Cantonment Ed., Poona's case. One of the grievances of the respondent before the High Court in the above case was that the Cantonment Board could not levy the tax on two of the cinemas at rates different from those which were levied on other cinemas within the same area. Even this objection or grievance of the parties was rejected by the High Court and it was observed that as far as taxation is concerned, classification is always permissible. It is unnecessary to speculate into the reasons apart from general prosperity claimed for such areas which may have induced the State to impose a higher rate of such tax in a Corporation area and prescribe a lower rate for the others i.e., non-Corporation areas. It may be noted in passing that the same approach (i.e., a differential in the rate of tax for these areas) is also to be found for money-lenders. It is difficult to conceive of a reason why professionals in entry 2 are treated on a par as far as this differential is concerned with money-lenders under entry 14. What we are concerned with is the simple question whether such sub-classification and differential rates between Corporation areas and non-Corporation areas is discriminatory. What it amounts to in practice is charging higher rates of tax in certain areas in the State, but subject to the overall limit of Rs. 250 per annum. It may be noted in the first place that for both the areas for professionals with less than two years' standing total exemption is provided, and professionals with more than ten years of standing are charged at the highest rate of Rs. 250 per annum in both areas. The difference in the rates for the two areas arises between two years' standing and ten years' standing. The reason offered in the return that these areas are more prosperous does not appear to be fully convincing. Whatever be the reason or motive of the Legislature, it has decided to impose a higher rate for the five Corporation areas (namely Bombay, Nagpur, Pune, Sholapur and Kolhapur) and to lessen the rigour of the levy for the other areas. As stated earlier, a geographical classification is always permissible and at the highest it would amount to a slight lessening of the rigour of the tax for the non-corporation areas; this does not, in my opinion, amount to any hostile discrimination. Perhaps the reason or motive which weighed with the Legislature, which is not at all well expressed in the return, does not bear close or careful scrutiny. Perhaps a better classification could be made or suggested by the Bar Council or by the Court. But merely because the reason for the classification does not appeal to the Court or a better classification can be made and shown to be so will not make the classification made by the Legislature discriminatory or violative of Article 14.

119. We now come to a discussion of the other criteria applied by the Legislature viz., the standing of the professionals. It has to be conceded that the standing of a professional does not have any necessary co-relation with his income or earning capacity. It is true that as far as the first two years are concerned, the Legislature has appreciated the difficulty of any professional to get established.

But even after the initial teething troubles are over, it would not follow that all professionals earn equally and that there are not far-reaching differences between the incomes so that such a tax will amount to a light impost for one, whereas for another it may amount to an extremely onerous imposition. However, I have rejected as a matter of legal requirement the argument that the levy or incidence of the tax must be co-related with the paying capacity. Having rejected that argument, it becomes necessary to consider whether the classification criterion as adopted by the Legislature is so irrational that it must be held to be discriminatory and, therefore, violative of Article 14. Once the foundation of paying capacity is taken away, then the criterion adopted by the Legislature as far as standing is concerned does not appear to me to be as irrational or as absurd as was sought to be made out at the Bar. I would try to read the rates prescribed in entry 2 in a slightly different manner than what appears in the entry of the schedule. It can be considered that the Legislature intended to impose tax at the maximum flat rate but subject to relief being given to various cases depending upon the standing and in relation to the area of operation. If that is how the rates are looked at, then it would appear that the classification adopted by the Legislature is not wholly irrational though the relief granted based upon the standing in certain cases may be illusory since there may be advocates and other professional people who have sufficient standing which would deny to them the relief granted by the Legislature but not sufficient income as would render the levy anything but onerous. It is, however, for the Legislature to consider such questions of hardship and the Court may not strike down a legislative provision on account of such considerations.

120. It is clear, therefore, that once the premise of the argument is rejected, the further argument of the petitioners and of the Bar Council impugning the vires of the entry becomes weak and liable to be rejected.

121. It had been earlier indicated that the proper principles to be applied by Courts in disposing of such challenge have been laid down by the Supreme Court in *Twyford Tea Co.'s case* and subsequently in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, . As observed in the latter case, the question of classification is one primarily for the legislative judgment and ordinarily does not become a judicial question. The Court cannot strike down a law because the Legislature has not made the classification which commends to the Court as proper. The legislative power cannot be said further to have been unconstitutionally exercised merely because within the class a sub-classification which was reasonable has not been made. The test propounded is whether a statutory provision strikes the Court as so greatly unfair as to attract the lethal power of the Court to strike it down. In my view, the provisions contained in entry 2 to a certain extent would operate harshly and onerously. It is equally clear that the desideratum earlier indicated viz., the co-relation of tax with the capacity to pay has not been followed as far as this entry is concerned as also in case of certain other entries where a flat rate is prescribed. Even then because of my finding that co-relation with the capacity to pay is not a matter of legal

obligation for such taxes, I am unable to hold that the provision is violative of Article 14.

122. If the decisions of Deshpande J. and Pendse J. are perused, it appears that after indicating their respective opinions on the constitutional challenge they have passed orders disposing of these three special civil applications and whereas Deshpande J. has discharged the Rule in all the three petitions, Pendse J. has made the Rule in each of the petitions partly absolute as far as entry 2 in Schedule I to the said Act is concerned. My attention has been drawn to the decision given in *Gopinath Budhaji Bhoir v. The State of Maharashtra* [1977] Cri. Appeal No. 77 of 1974 decided by Deshmukh J. on July 18, 1977 (Unrep.) decided on July 18, 1977 by Deshmukh J. to whom the appeal was referred by reason of difference of opinion between Vaidya J. and Sawant J. The question had arisen whether the matter should again be placed before the division Bench and it was decided that it was not necessary to place the matter again before the division Bench and that the opinion of the third Judge would constitute the judgment and effective order of the Court. It was further directed that this would be the settled practice thereafter as far as this Court was concerned.

123. Accordingly agreeing with Deshpande J., I would discharge the rules in all the three petitions. The parties will however bear their own costs.