

KARNATAKA BANK LTD.

v.

STATE OF A.P. & ORS.

(Civil Appeal No. 1994 of 2002 etc.)

JANUARY 21, 2008

**[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]**

*Andhra Pradesh Tax on Professions, trades, Callings and Employments Act, 1987 – s. 2 (b) Explanation and First Schedule Explanation No. 1 – Levy of profession tax – On the branches of a company – Treating them as a ‘person’ – Constitutional validity of – Held: Inclusion of the branches in the definition of person does not violate Article 276 (2) of the Constitution – State legislature is competent to make law in respect of profession tax by virtue of Entry 60 of List II of Seventh Schedule – The power to make law on the tax also includes power to determine the persons who are liable to pay such tax – Definition of ‘person’ under General Clauses Act, as adopted for interpretation of Constitution, being illustrative and not exhaustive, does not restrict the power of State Legislature to define ‘person’ differently – Constitution of India, 1950 – Articles 246, 276 (2) and 367; Seventh Schedule List II Entry 60 – General Clauses Act, 1897 – s. 3 (42).*

*Interpretation of statutes – Inclusive definitions – Interpretation of.*

*Taxation – Tax on profession and tax on income – Difference between.*

**Appellant-companies were having various branches within the State of Andhra Pradesh. The authority concerned issued notices requiring them to pay profession tax of Rs. 2500/- by each of their branches within the State. Appellants filed writ petitions challenging the constitutional validity of explanation to the definition of the term ‘person’ defined in clause (j) to s. 2 of Andhra**

A Pradesh Tax on Professions, trades, Callings and Employments Act, 1987 as well as Explanation I to the First Schedule of the Act. High Court upheld the validity of the provisions.

B In appeal to this court, the question for consideration was whether the Explanation to the terms 'person' defined u/s 2 (j) of the Act and Explanation I to the First Schedule of the Act, was violative of Article 276 (2) of the Constitution of India, 1950.

C Dismissing the appeals, the Court

HELD: 1.1 The definition of the word "person" in the impugned Explanation and also Explanation No. I to the First Schedule of Andhra Pradesh Tax on Professions, trades, Callings and Employments Act, 1987 is not intended to tax a person at a rate higher than Rs.2500/- per annum, per person, but to treat even a branch of a firm, company, corporation or other corporate body, any society, club or association as a separate person, and therefore, a separate assessee within the meaning of Section 2 (b) of the Act and the Andhra Pradesh State Legislature has undoubtedly the competency to adopt such a devise of taxation. The Andhra Pradesh State Legislature did not violate the mandate of Article 276(2) of the Constitution. [Para 45] [1011-E-G]

F 1.2. The State Legislature undoubtedly is competent to make a law relating to taxes for the benefit of the State or other local authorities therein in respect of professions, trades, callings or employments. It is traceable to Entry 60 of List II of the Seventh Schedule but that power of the Legislature to make such a law to levy and collect the profession tax is made subject to the restrictions as provided for under Article 276 (2) of the Constitution. [Para 25] [1002-B-C]

H *Kesavananda Bharati vs. State of Kerala 1973 (suppl)*

**SCR 1; Bharat Kala Bhandar Ltd. vs. Municipal Committee, Dhamangaon 1965 (3) SCR 499; The Bengal Immunity Company Limited vs. The State of Bihar and Ors. 1955 (2) SCR 603; Atiabari Tea Co. Ltd. vs. The State of Assam and Ors. 1961 (1) SCR 809** – referred to.

*R. vs. Burah* 1878 (5) I.A. 178 – referred to.

**1.3 Entry 60 of List II of Seventh Schedule of the Constitution, which authorizes the State Legislature to make a law relating to tax on profession is to be read along with Article 276 of the Constitution. Article 276 is also declaratory in its nature inasmuch as it declares that notwithstanding anything contained in Article 246, no law of the Legislature of a State relating to taxes for the benefit of State etc. in respect of profession, trades etc. shall be invalid on the ground that it relates to tax on income. Likewise, it also declares the power of the Legislature of a State to make such laws with respect to taxes on professions etc. shall not be construed as limiting in any way the Parliament's power to make laws with respect to taxes on income accruing from or arising out of profession, trade etc. A tax on profession is not necessarily connected with income. A tax on income can be imposed if a person carries on a profession, trade, calling etc. Such a tax on profession is irrespective of the question of income. There is no other restriction imposed upon a State Legislature in making law relating to tax on profession, trade, calling and employment. There can be no doubt whatsoever that a State Legislature cannot make any law to levy and collect profession tax at the rate of more than Rs.2500/-per person, per annum, in view of the restriction in Article 276(2) of the Constitution. [Para 28] [1003-E-H; 1004-A-B]**

**1.4 Entry 60 in List II gives the outline of the subject matter of legislation and therefore, the words in the Entry are to be construed in their widest amplitude. The field of legislation covered by the Entry is not to be narrowed**

A down in any way unless there is anything in the Entry  
itself which defines the limits thereof. The impugned  
provisions are merely concerned with specifying different  
assessable units for purposes of assessment of  
profession tax and imposition of the levy. [Paras 40 and  
B 41] [1009-F-G]

*Wealth Tax Officer vs. C.K. Mammed Kayi* 1981 (3) SCC  
23 – relied on.

C 1.5 The power to make a law with respect to a tax  
comprehends within its power to levy that tax and to  
determine the persons who are liable to pay such tax, the  
rate at which such tax is to be paid and the event which  
will attract liability in respect of such tax. This was  
generally by the charging Sections of the particular tax  
D law. [Para 31] [1004-G-H; 1005-A]

*East India Tobacco Co. vs. State of Andhra Pradesh* 1963  
(1) SCR 404 – referred to.

E 1.6 The term “person” is not defined in the  
Constitution. But Article 367 of the Constitution provides  
that the definitions contained in the General Clauses Act  
apply for the interpretation of the Constitution. The  
definition of “person” in Section 3 (42) of General Clauses  
Act, would not restrict the power of the State Legislature  
to define a “person” and adopt a meaning different from  
F or in excess of the ordinary acceptation of the word as is  
defined in the General Clauses Act. [Para 33] [1005-E-G]

*N. Subramania Iyer vs. Official Receiver Quilon and Anr.*  
AIR 1958 SCR 257; *Hasmukhalal Dahyabhai and Ors. vs.*  
G *State of Gujarat and Ors.* 1976 (4) SCC 100 – relied on.

H 1.7 “Person” under Section 3 (42) of the General  
Clauses Act shall include any company or association or  
body of individuals whether incorporated or not. The  
definition of “person” under Section 3(42) of the General  
Clauses Act is not applicable automatically to interpret the

provisions of the Constitution unless the context so requires and makes that definition applicable. [Para 36] [1008-B-D] A

1.8 Section 3 of the General Clauses Act, 1897 itself says that unless there is anything repugnant in the subject or context the term "person" shall include any company or association or body of individuals, whether incorporated or not. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "statute". [Para 37] [1008-E-F] B C

*The Commissioner of Income-tax, Andhra Pradesh vs. M/s Taj Mahal Hotel, Secudnerabad 1971 (3) SCC 550 – referred to.*

1.9 The definition of "person" in Section 3 (42) of the General Clauses Act is undoubtedly illustrative and not exhaustive. The well known rule of interpretation regarding such inclusive definitions has always been to treat the other entities, who would not otherwise have come strictly within the definition, to be a part thereof, because of illustrative enactment of such definitions. The legislature is competent in its wisdom to define "person" separately for the purposes of each of the enactment and different from the one in the General Clauses Act and create an artificial unit. The definition of "person" in the General Clauses Act would not operate as any fetter or restriction upon the powers of the State Legislature to define "person" and adopt a meaning different from as defined in the General Clauses Act. [Para 39] [1009-C-E] D E F

1.10 The Legislature is not denuded of its competency to define the term "person" differently from the definition of that term in the General Clauses Act, 1897. It is not uncommon practice for the Parliament or State Legislature to define "person" in the Act and create an artificial unit by fiction. [Para 38] [1008-G-H; 1009-A] G H

A 1.11 It is not correct to say that the definition of  
"person" has the effect of destroying the legal identity of  
the company and creates an artificial entity unknown to  
law. The appellant-company continues to be company  
within the meaning of Section 3 of the Companies Act,  
B 1956 which defines the "company", "existing company",  
"private company" and "public company" for the  
purposes of the Companies Act. Its status as one entity  
continues to be the same. It is only for the purposes of  
the present Act even its branches are treated as a "person"  
C enabling the authorities to levy and collect profession tax.  
[Paras 42 and 43] [1010-B, C, G, H; 1011-A-B]

*English Electric Company of India Ltd. vs. The Deputy  
Commercial Tax Officer 1976 (4) SCC 460 – distinguished.*

D 2. There is always a presumption in favour of  
constitutionality, and a law will not be declared  
unconstitutional unless the case is so clear as to be free  
from doubt; "to doubt the constitutionality of a law is to  
resolve it in favour of its validity." Where the validity of a  
statute is questioned and there are two interpretations,  
E one of which would make the law valid and the other void,  
the former must be preferred and the validity of law upheld.  
In pronouncing on the constitutional validity of a statute,  
the Court is not concerned with the wisdom or un-  
wisdom, the justice or injustice of the law. If that which is  
F passed into law is within the scope of the power conferred  
on a Legislature and violates no restrictions on that power,  
the law must be upheld whatever a Court may think of it.  
[Para 17] [997-G-H; 998-A-B]

G *Fram N. Balsara vs. Bombay 1951 SCR 682; State of  
W.B. and Anr. vs. E.I.T.A. India Ltd. and Ors. 2003 (5) SCC  
239 – relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1994  
of 2002.

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From the final Judgment / Order dated 11.7.2001 of the High Court of Judicature, Andhra Pradesh at Hyderabad in W.P. No. 17683/1997. A

WITH

CIVIL APPEAL Nos. 1995 and 2400 of 2002. B

D.A. Dave, S.N. Bhat, D.P. Chaturvedi, N.P.S. Panwar, Madhvi Diwan, A.V. Rangam and B.A. Ranganadhan for the Appellant.

Anoop G. Chaudhary, Manoj Saxena, Rajnish Kr. Singh, Rahul Shukla, T.v. George, Devender Singh and Sushma Suri for the Respondents and Sanjay Hegde for Intervenor. C

The Judgment of the Court was delivered by

**B. SUDERSHAN REDDY, J.** 1. This batch of appeals arises out of a common order passed by the Andhra Pradesh High Court whereby and whereunder the Writ Petitions filed by the appellants challenging the constitutional validity of the explanation to the definition of the term "person" defined in clause (j) of Section 2 of the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 (Act No.22 of 1987), for short 'the Act', as well as Explanation No.1 to the First Schedule of the said Act as amended by Act No.29 of 1996 have been dismissed. In order to consider as to whether the said provisions of the Act suffer from any vice of unconstitutionality we shall briefly refer to the facts. D  
E  
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**BRIEF FACTS:**

2. The appellant in C.A.No.2400/02 is M/s. Shaw Wallace and Company Limited, a Company registered under the Companies Act, 1956. It has its principal place of business at Secunderabad in A.P. State. In addition to its principal place of business at Secunderabad the appellant has branches and stock points where it transacts its business and stores its goods. At the material time, the appellant had about 74 stock points, every stock point has been duly recorded with the registering authority H

A under the A.P. General Sales Tax Act. It is aggrieved by the notice  
issued by the first respondent requiring the appellant to pay  
profession tax at Rs.2500/- for each of its branches in A.P. for  
the years 1996-97 and 1997-98. The respondent altogether  
demanded a sum of Rs.3,42,000/- at the rate of Rs.2500/- per  
B annum for each of the branches of the appellant Company. The  
first respondent obviously relied on the Explanation No. 1 to the  
First Schedule to the Act defining the expression "person" which  
we shall notice little later. It is under those circumstances the  
appellant invoked the jurisdiction of the High Court under Article  
C 226 of the Constitution of India and prayed for grant of  
appropriate reliefs.

3. The appellant in C.A.No.1994/02 is a banking Company  
engaged in banking activities having the network of over 300  
branches spread throughout India. The appellant altogether at  
D the relevant time had branches in 17 places within the State of  
Andhra Pradesh. It had obtained the certificate of enrolment  
from the first respondent at Hyderabad where it has its principal  
place of business. The appellant was paying Profession Tax in  
respect of principal branch at Hyderabad alone. The first  
E respondent herein issued similar notices requiring the appellant  
to pay Profession Tax of Rs.2500/- to be paid by each of its  
branches in the State of Andhra Pradesh.

4. The appellant in C.A.No.1995/02 is a partnership firm  
engaged in the business of sale of petroleum products. It has  
F its principal place of business at Secunderabad in the State of  
Andhra Pradesh. In addition to its principal business premises,  
it has other petroleum outlets outside Hyderabad and  
Secunderabad. The first respondent issued similar notices  
demanding Profession Tax by treating the various branches of  
G the appellant firm as a different person at the rate of Rs.2500/-  
per annum. Each of the appellant's branch has been treated as  
a separate person for the purposes of levy and realization of  
tax under the provisions of the Act.

H 5. The Writ Petitions filed by each of the appellant

challenging the constitutional validity of the provisions of the said Act referred to hereinabove came up before a Division Bench of the A.P. High Court which has upheld the validity of the provisions. A

### RELEVANT CONSTITUTIONAL PROVISIONS AND SCHEME OF THE ACT B

6. Clause (1) of Article 276 of the Constitution enables a State Legislature to enact a Legislation imposing tax on professions, trades, callings and employments and further provides that such law made by a State Legislature shall not be declared invalid on the ground it relates to tax on income. Clause (2) of Article 276 as it stood prior to the Constitution (Sixtieth Amendment) Act, 1988 commands that the total amount payable in respect of any one person to the State or to any local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed Rs.250/- per annum. The Constitution (Sixtieth Amendment) Act, 1988 enhanced the tax limit prescribed under clause (2) of Article 276 and increased it to Rs.2500/-. The relevant Entry empowering the State Legislature to enact the law imposing taxes on professions, trades etc. is founded on Entry 60 of List II to the Seventh Schedule. The purpose of Article 276 is not to amend that power of State Legislature but to merely to provide that such tax is not invalid on the ground that it relates to a tax on income. C D E

7. Before we proceed to consider the validity of the impugned provisions of the said Act, it would be appropriate to notice the broad scheme and relevant provisions thereof. F

### SCHEME OF THE ACT:

8. The Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 is an Act to provide for the levy and collection of tax on professions, trades, callings and employments. Prior to the enactment of the said Act profession tax was being levied in the State as per the provisions of the Hyderabad Municipal Corporation (Act No. II of 1956), G H

- A the Andhra Pradesh Municipalities Act, 1965 ( Act No. 6 of 1965) and the Andhra Pradesh Gram Panchayats Act, 1964 ( Act No. 2 of 1964). Those Acts were being administered by the Local Authorities. The State with a view to rationalize the levy and collections of profession tax and also with a view to improve the
- B collections of the profession tax enacted a single comprehensive legislation for the levy and collection of profession tax. Be it noted, the local authorities, after the commencement of Act, are prevented from levying any tax on professions, trades, callings and employments. The object of the Act is to levy tax on
- C professions, trades etc. Tax is levied on the person engaged in any profession, trade, calling etc.

9. Section 2 of the Act contains the definitions. Clause (j) defines "person". It reads as under :

- D "(j) "person" means any person who is engaged in any profession, trade, calling of employment in the State of Andhra Pradesh and includes a Hindu Undivided Family, Firm, Company, Corporation or other corporate body, any society, club or association, so engaged but does not
- E include any person who earns wages on a casual basis.

Explanation: Every branch of a firm, Company, Corporation or other corporate body, any Society, Club or Association shall be deemed to be a person."

- F 10. Clause (l) of Section 2 defines 'Profession Tax' as a tax leviable under the Act. Section 2(b) defines 'assessee' as a person or employer by whom tax is payable under the Act.

- G 11. Section 4 of the Act is the charging Section providing for levy and collection of tax on professions, trades, callings and employments for the benefit of State. Section 5 imposes liability on the employer to deduct and pay tax on behalf of its employees. Section 6 provides that every employer other than a State or Central Government who is liable to pay tax on behalf of his employee should register and obtain a certificate of registration within 30 days of his becoming liable to pay tax
- H

from the assessing authority.

12. Explanation No. I to the First Schedule of the Act reads:

"Notwithstanding anything in the schedule, every branch of any self-employed assessee enumerated in items 2 to 21 of the schedule shall be deemed to be a separate assessee for the purpose of levy of profession tax specified in the schedule."

It is not necessary for the purposes of disposal of this batch of appeals to notice the other provisions of the Act.

### **SUBMISSIONS:**

13. Shri D.A. Dave, learned senior counsel submitted that the competency of the State Legislature to make a law relating to taxes for the benefit of the State or other local authorities therein in respect of professions, trades, callings or employments is structured by Article 276 of the Constitution and any such law made by the State Legislature is to be within the four corners of that Article. The submission was that the total amount payable in respect of any one person to the State by way of taxes on professions etc. shall not exceed Rs.2500/- per annum. The state Legislature is not competent to treat every branch of a Company or firm or club etc. as a separate person for the purposes of levy and collection of Profession Tax. The branches of a Company have no independent and separate existence. It was submitted that though there is no definition of "person" in the Constitution, the meaning of the expression "person" is to be ascertained from the provisions of the General Clauses Act inasmuch as Article 367 of the Constitution provides the General Clauses Act, 1897 to be made applicable for the interpretation of the Constitution. Section 3(42) of the General Clauses Act defines "person" as a Company or Association or body of individuals whether incorporated or not. Relying on the said definition it was contended that branches of Company, Association or body of individuals cannot be treated as a separate person. Shri AV Rangam adopted the submissions

A made by the learned senior counsel.

14. Shri Anoop G. Chaudhary, learned senior counsel appearing on behalf of the State of A.P. contended that the impugned provisions of the Act do not suffer from any constitutional infirmity. The Legislature is competent to define person and such artificial definitions are not unknown to law. It was submitted that no doubt Article 367 provides that the General Clauses Act, 1897 applies for the interpretation of the provisions of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. But the General Clauses Act itself is a statute for interpretation of other enactments, unless there is anything repugnant in the subject or context. The very definition of "person" provided in Section 3(42) is an inclusive one and it no way impairs the competence of the State Legislature to make law relating to taxes for the benefit of the State in respect of professions etc. and define "person" for the purposes of such law.

15. Shri Sanjay Hegde, learned counsel for the Intervener broadly adopted the submissions made by the learned senior counsel for the State of Andhra Pradesh.

**THE CORE ISSUE:**

16. The core question that arises for our consideration in this batch of appeals is that whether the Explanation to the definition of the term "person" defined under Section 2(j) of the Act and Explanation No.1 to the First Schedule of the Act is violative of the Article 276 (2) of the Constitution.

17. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity." Where the validity of a statute is questioned and there are two interpretations, one of which would

make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or un-wisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it. [ See – *Fram N. Balsara Vs. Bombay*<sup>1</sup>].

18. In *State of W.B. and another vs. E.I.T.A. India Ltd. and others*<sup>2</sup>, this court summarized the well settled principles to determine the constitutional validity of the provisions of any statute and held :

“ 4. In examining the constitutional validity of the impugned provisions of a statute, it will be useful to bear in mind the following well-settled propositions. If a legislation is found to lack in legislative competence or is found to be in contravention of any provision of Part III or any other provision of the Constitution, the impugned legislation cannot escape the vice of unconstitutionality (see : *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225: AIR 1973 SC 1461] and also *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709]. A challenge to any statutory provision on the ground of the classification being discriminatory and violative of Article 14 of the Constitution , can be successfully met on the principle of reasonable classification having nexus to the object of the Act sought to be achieved (see: *State of Bombay v. F.N. Balsara* [ AIR 1951 SC 318:1951 SCR 682:(1951)52 Cri LJ 1361 ] and *Budhan Choudhry v. State of Bihar* [ AIR 1955 SC 191: (1951) 1 SCR 1045 : 1955 Cri LJ 374]. However, the legislature enjoys a greater latitude for classification in the field of taxation (see: *Steelworth Ltd. v. State of Assam* [1962 Supp (2) SCR 589 : (1962) 13 STC 233, Gopal

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<sup>1</sup> (1951) SCR 682.

<sup>2</sup> (2003) 5 SCC 239

A Narain v. State of U.P. [AIR 1964 SC 370] and Ganga  
 Sugar Corpn. Ltd. v. State of U.P. [(1980)1 SCC 223:1980  
 SCC (Tax) 90:AIR 1980 SC 286]. No legislation can be  
 B declared to be illegal, much less unconstitutional on the  
 ground of being unreasonable or harsh on the anvil of  
 Article 14 of the Constitution, except, of course, when it  
 fails to clear the test of arbitrariness and discrimination  
 which would render it violative of Article 14 of the  
 Constitution. (See: Steelworth Ltd. and McDowell & Co.)

C **THE LAW MAKING POWER OF LEGISLATURE AND  
 CONSTITUTIONAL LIMITATIONS:**

19. We shall bear in mind the well settled principles and  
 proceed to analyze Article 276 of the Constitution of India and  
 impugned provisions of the Act.

D 20. Article 265 of the Constitution prohibits levy of collection  
 of a tax except by an authority of law, which means only a valid  
 law. The implied limitation is that the law providing for levy of tax  
 should be one which is a valid law.

E 21. The Privy Council, in *R. Vs. Burah*<sup>3</sup> laid down a  
 fundamental principle for the interpretation of a written  
 Constitution. Lord Selborne in a classic passage observed:

F "The Indian Legislature has powers expressly limited by  
 the Act of the Imperial Parliament which created it, and it  
 can, of course, do nothing beyond the limits which  
 G circumscribe these powers. But, when acting within those  
 limits, it is not in any sense an agent or delegate of the  
 Imperial Parliament, but has, and was intended to have,  
 plenary powers of legislation, as large and of the same  
 nature, as those of Parliament itself. The established of  
 courts of Justice, when a question arises whether the  
 prescribed limits have been exceeded, must of necessity  
 determine that question; and the only way in which they

H <sup>3</sup> (1878) 5 I.A. 178

can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it) it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

In *Kesavananda Vs. Kerala*<sup>4</sup> this Court reaffirmed the correctness of the principle laid down in *Burah* (supra)

22. In *Bharat Kala Bhandar Ltd. vs. Municipal Committee, Dhamangaon*<sup>5</sup>, this court held that the provisions of Article 276 of the Constitution which precludes State Legislature from making a law enabling a local authority to impose a tax on profession etc. in excess of Rs.2500/- per annum and the said provision is to be read in the Act or "to be deemed by implication to be there as the Constitution is a paramount law to which all other laws are subject." It is further held "moreover, we must bear in mind the provision of Article 265 of the Constitution which preclude the levy or collection of a tax except by authority of law which means only a valid law."

23. In *The Bengal Immunity Company Limited vs. The State of Bihar and others*<sup>6</sup>, this court while recognizing that the Constitution makers by Article 246(3) read with Entry 54 in List II of the Seventh Schedule to the Constitution conferred power on the Legislatures to make law with respect to taxes on the sale or purchase of goods other than newspapers held that the Constitution at the same time by Article 286 "clamped on the legislative power several fetters". Likewise Article 276 imposes

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<sup>4</sup> (1973 (supp.) SCR 1)

<sup>5</sup> (1965) 3 SCR 499

<sup>6</sup> (1955) 2 SCR 603

A fetters on the law making power of a State Legislature in the matter of making a law relating to taxes on professions, trades, callings and employments. Those restrictions are found in Article 276 (2) which commands that the total amount payable in respect of any one person to the State or to any one Municipality etc. or other local authority in the State by way of taxes on professions etc. shall not exceed Rs. 2500/- per annum.

24. In *Atiabari Tea Co. Ltd. vs. The State of Assam and others*<sup>7</sup>, this court while considering the width and amplitude of Article 301 observed :

C *"On the other hand, the opening words of Art. 301 are very significant. The doctrine of the freedom of trade, commerce and intercourse enunciated by Art. 301 is not subject to the other provisions of the Constitution but is made subject only to the other provisions of Part XIII; that means that once the width and amplitude of the freedom enshrined in Art. 301 are determined they cannot be controlled by any provision outside Part XIII. This position incidentally brings out in bold relief the important part which the Constitution-makers wanted the doctrine of freedom of trade to play in the future of the country. It is obvious that whatever may be the content of the said freedom it is not intended to be an absolute freedom; absolute freedom in matters of trade, commerce and intercourse would lead to economic confusion, if not chaos and anarchy; and so the freedom guaranteed by Art. 301 is made subject to the exceptions provided by the other Articles in Part XIII. The freedom guaranteed is limited in the manner specified by the said Articles but it is not limited by any other provisions of the Constitution outside Part XIII. That is why it seems to us that Art. 301, read in its proper context and subject to the limitations prescribed by the other relevant Articles in Part XIII, must be regarded as imposing a constitutional limitation on*

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H <sup>7</sup> (1961) 1 SCR 809

*the legislative power of Parliament and the Legislatures of the States."* A

**(Emphasis supplied)**

25. It is unnecessary to burden this judgment with various authoritative pronouncements of this court wherein constitutional limitations on the legislative power of Parliament and the Legislatures of the States have been recognized. The State Legislature undoubtedly is competent to make a law relating to taxes for the benefit of the State or other local authorities therein in respect of professions, trades, callings or employments. It is traceable to Entry 60 of List II of the Seventh Schedule but that power of the Legislature to make such a law to levy and collect the profession tax is made subject to the restrictions as provided for under Article 276 (2) of the Constitution. B C

26. Article 276 of the Constitution of India corresponds to Section 142A of the Government of India Act, 1935. The legislative history upon which Section 142A of the Government of India Act, 1935 was enacted and on which Article 276 of the Constitution now rests was noticed by this court in *Bharat Kala Kendra (Supra)*. It is observed: D

" . . . . It is that the legislative spheres of the Provinces and the Centre came to be clearly demarcated in regard to items falling within Lists I and II of Schedule VII of the Govt. of India Act and now to those falling within the same lists of Schedule VII of the Constitution. Taxes on professions, trades, callings and employments are taxes on income and are thus outside the provincial/ and now State – lists and belong exclusively to Parliament and before that to the Central Legislature. Yet under a large number of laws enacted before the Govt. of India Act, 1935 came into force, power was conferred on local Governments and local authorities to impose taxes on such activities. This was obviously in conflict with S.100 of the Govt. of India Act. When this was realized S.142-A was enacted by the British Parliament which saved the power conferred by E F G H

A pre-existing laws but limited the amount payable to Rs.50 after 31<sup>st</sup> March, 1939. A saving was made, however, of pre-existing laws subject to certain conditions with which we are not concerned. The provisions of this section have been substantially reproduced in Article 276 of the Constitution with the modification that the upper limit of such tax payable per annum would be Rs.250 instead of Rs.50. A tax can be recovered only if it is 'payable' and it would be payable only after it is assessed.

C 27. The purpose of Article 276 is not to amend the State's power to tax profession founded on Entry 60 but is to provide that such tax is not invalid on the ground that it relates to a tax on income.

D 28. A plain reading of Article 276 makes it abundantly clear that a State Legislature is precluded from making laws enabling the authorities to impose tax on professions, trades, callings etc. in excess of the prescribed amount, such law if enacted by a Legislature would be in the teeth of Article 276 of the Constitution. The total amount payable in respect of any one person to the State or to any one municipality or other local authority etc. in the State by way of tax on profession etc. shall not exceed Rs.2500/- per annum. Entry 60 of List II which authorizes the State Legislature to make a law relating to tax on profession is to be read along with Article 276 of the Constitution. Article 276 is also declaratory in its nature inasmuch as it declares that notwithstanding anything contained in Article 246, no law of the Legislature of a State relating to taxes for the benefit of State etc. in respect of profession, trades etc. Shall be invalid on the ground that it relates to tax on income. Likewise, it also declares the power of the Legislature of a State to make such laws with respect to taxes on professions etc. shall not be construed as limiting in any way the Parliament's power to make laws with respect to taxes on income accruing from or arising out of profession, trade etc. For the purposes of this case, it is not necessary to notice the distinction between tax and profession and income. It is well settled that a tax on profession

is not necessarily connected with income. A tax on income can be imposed if a person carries on a profession, trade, calling etc. Such a tax on profession is irrespective of the question of income. There is no other restriction imposed upon a State Legislature in making law relating to tax on profession, trade, calling and employment. There can be no doubt whatsoever that a State Legislature cannot make any law to levy and collect profession tax at the rate of more than Rs.2500/-per person, per annum, in view of the restriction in Article 276(2) of the Constitution.

29. We have noticed that Section 4 of the Act which deals with levy and charge of tax mandates that there shall be levied and collected a tax on professions, trades, callings and employments etc. for the benefit of the State and every person engaged in any profession, trade, calling etc. in the State falling under any one or other of the classes specified in Column (2) of the first Schedule shall be liable to pay tax at the rate specified in the corresponding Entry in Column (3) thereof. The maximum rate specified in the First Schedule at which profession etc. is levied and liable to be paid by every person admittedly does not exceed Rs 2500/- per annum. Article 276(2) does not prohibit such levy and collection of tax from every one person not exceeding Rs. 2500/- per annum.

30. In *East India Tobacco Co. vs. State of Andhra Pradesh*<sup>8</sup>, this court approved Willis : Constitutional law to the effect: "A State does not have to tax every thing in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

(Emphasis supplied)

31. It is well settled that the power to make a law with respect to a tax comprehends within its power to levy that tax and to determine the persons who are liable to pay such tax, the rate at which such tax is to be paid and the event which will

<sup>8</sup> 1963 1 SCR 404

A attract liability in respect of such tax. This was generally by the charging Sections of the particular tax law.

**WHETHER THE STATE LEGISLATURE HAS EXCEEDED ITS POWER IN DEFINING THE "PERSON" AND THEREBY TRANSGRESSED THE CONSTITUTIONAL LIMITATIONS:**

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D 32. The question which we therefore have to consider is whether in the exercise of its power to make a law relating to taxes on professions, trades, callings and employments within the State, the Legislature of that State has the legislative competence to define "person" engaged in any profession, trade etc.? The question requiring our decision is whether the A.P. State Legislature is competent to introduce the fiction in the Explanation to the definition to the word "person" and also Explanation No.1 to the First Schedule of the Act? Whether introducing such fiction, Legislature has exceeded its legislative power thereby transgressed the constitutional limitation?

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G 33. We do not find any merit in the contention that the Legislature lacks legislative competence to define "person" who is liable to pay profession tax etc. which includes every branch of a firm, Company, Corporation or other corporate body, any Society, Club or Association. The term "person" is not defined in the Constitution. But Article 367 of our Constitution provides that the definitions contained in the General Clauses Act apply for the interpretation of the Constitution. Therefore, we are required to consider whether the definition of "person" in Section 3 (42) of the General Clauses Act restrict the power of State Legislature to define the term "person" and adopt a meaning different from the definition in the General Clauses Act. In our considered opinion, the definition of "person" in General Clauses Act, would not restrict the power of the State Legislature to define a "person" and adopt a meaning different from or in excess of the ordinary acceptance of the word as is defined in the General Clauses Act.

H 34. In *N. Subramania Iyer Versus Official Receiver Quilon*

& Anr.<sup>9</sup> this Court while considering the question whether it was necessary in annulment proceedings under Section 53 of the Provincial Insolvency Act to prove that the transferor who has been subsequently adjudged an insolvent should have been honest and straightforward in the matter of transaction impeached held that even if the transferor was wanting in bona fides the crucial question still remains to be answered and unless it is found that the transferee was wanting in bona fides in respect of the transaction in question, he cannot be affected by the dishonest course of conduct of the transferor. The High Court in that case had taken the view that the mortgagee had failed affirmatively to prove its *bona fides* and the said conclusion was based upon the consideration that the General Clauses Act defined "good faith" as "nothing is said to be done or believed in good faith which is done or believed without due care and attention." It is in that context this Court while analyzing the scope of provisions of the General Clauses Act observed that the General Clauses Act is enacted in order to shorten language used in parliamentary legislation and to avoid repetition of the same words in the course of the same piece of legislation. "Such an Act is not meant to give a hide-bound meaning to terms and phrases generally occurring in legislation. That is the reason why definition section contains words like 'unless there is anything repugnant in the subject or context.' Words and phrases have either a very narrow significance or a very wide significance according as the context and subject of the legislation requires the one or the other meaning to be attached to those words or phrases." The Court recognized that the legislature is entitled in its wisdom to give a special definition of the terms already defined in the General Clauses Act and different from the one in the General Clauses Act. It is observed the definition of "good faith" in the General Clauses Act would have been applicable to the Limitation Act also but the legislature in its wisdom has given a special definition of "good faith" different from the one in the General Clauses Act advisedly."

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<sup>9</sup> [AIR 1958 SC 1]= [ 1958 SCR 257]

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A 35. In *Hasmukhalal Dahyabhai & Ors. Versus State of Gujarat & Ors.*<sup>10</sup> interpretation of Articles 31A and 31B of the Constitution of India in relation to the Gujarat Agricultural Land Ceiling Act, 1961 came up for consideration. The Gujarat Agricultural Land Ceiling Act, 1961 conceives of each "person" holding land in the single unit whose holding must not exceed the ceiling limit. Section 2, sub-section (21) says: "person" "includes a joint family". This has been done apparently to make it clear that, in addition to individuals, as natural persons, families, as conceived of by other provisions, can also be and are persons. It was argued that the concept of the term "person" having been fixed by the General Clauses Act, this concept and no other must be used for interpreting the second proviso to Article 31A of the Constitution of India. This Court held:

D "10. It is true that, but for the provisions of Section 6, sub-section (2) of the Act, the term "person", which includes individuals, as natural persons, as well as groups or bodies of individuals, as artificial persons, such as a family is, the entitlement to the ceiling area would be possessed by every person, whether artificial or natural. In other words, if Section 6(2) of the Act was not there, each individual member of a family would have been entitled to hold land upto the ceiling limit if it was his or her legally separate property. This follows from the obvious meaning of the term "person" as well as the inclusive definitions given both in the Act under consideration and in the General Clauses Act."

G 36. The expression "person" is employed in more than one Article of the Constitution of India. We shall not refer to all those Articles where the expression "person" has been used. It would be enough to notice Articles 20, 21, 22 and 226 of the Constitution of India where it has been used. The provision of the General Clauses Act, 1897 which is applicable for the interpretation of the Constitution as provided for under clause

H <sup>10</sup> [AIR 1976 SC 2316]=[ (1976)4 SCC100]

(1) of Article 367 itself restricts the applicability of the Act and makes such an application subject to the context as otherwise may require. The trinity of Articles 20, 21, 22 broadly guarantee the personal liberties against the State to individual person. They are not guaranteed to all those who are included in the definition of "person" under section 3 (42) of the General Clauses Act. "Person" under Section 3 (42) of the General Clauses Act shall include any company or association or body of individuals whether incorporated or not. Does it mean that the High Court is entitled to issue a writ or order or direction under Article 226 of the Constitution against every "person" under Section 3 (42) of the General Clauses Act? It is well settled that the remedy available under Article 226 is a public law remedy and a writ and does not lie against a person not discharging public law duties. It is thus clear that the definition of "person" under Section 3 (42) of the General Clauses Act is not applicable automatically to interpret the provisions of the Constitution unless the context so requires and makes that definition applicable.

37. Section 3 of the General Clauses Act, 1897 itself says that unless there is anything repugnant in the subject or context the term "person" shall include any company or association or body of individuals, whether incorporated or not. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "statute". "When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include." [ See – *The Commissioner of Income-tax, Andhra Pradesh Vs. M/s Taj Mahal Hotel, Secudnerabad*<sup>11</sup>

38. In our considered opinion, the Legislature is not denuded of its competency to define the term "person" differently from the definition of that term in the General Clauses Act, 1897. There are many illustrations showing that the same words have

<sup>11</sup>(AIR 1972 SC 168 = (1971) 3 SCC 550)

A been used in different senses in different context. It is not uncommon practice for the Parliament or State Legislature to define "person" in the Act and create an artificial unit by fiction. For instance, Section 2 (31) of the Income-Tax Act, 1961 defines "person" including (a) an individual, (b) a Hindu undivided family, B (c) a Company, (d) a firm, (e) an association of persons or a body of individuals, whether incorporated or not, (f) a local authority and (g) every artificial juridical person, not falling within any of the preceding sub-clauses and the same is much wider than the term "person" as defined in the General Clauses Act.

C 39. The definition of "person" in Section 3 (42) of the General Clauses Act is undoubtedly illustrative and not exhaustive. The well known rule of interpretation regarding such inclusive definitions has always been to treat the other entities, who would not otherwise have come strictly within the definition, D to be a part thereof, because of illustrative enactment of such definitions. The legislature is competent in its wisdom to define "person" separately for the purposes of each of the enactment and different from the one in the General Clauses Act and create an artificial unit. The definition of "person" in the General Clauses E Act would not operate as any fetter or restriction upon the powers of the State Legislature to define "person" and adopt a meaning different from as defined in the General Clauses Act.

F 40. In our view, Entry 60 in List II gives the outline of the subject matter of legislation and therefore, the words in the Entry are to be construed in their widest amplitude. The field of legislation covered by the Entry is not to be narrowed down in any way unless there is anything in the Entry itself which defines the limits thereof.

G 41. The impugned provisions are merely concerned with specifying different assessable units for purposes of assessment of profession tax and imposition of the levy. It is well settled and cannot be disputed "that the Legislature can select persons, properties, transactions and objections for the imposition of levy and for that purpose classify as many different H

assessing units as it could reasonably think necessary.....” A  
[See - *Wealth Tax Officer Versus C.K. Mammed Kayi*<sup>12</sup>

42. Shri A.V. Rangam, learned counsel relying on the decision of this Court in *English Electric Company of India Ltd. Vs. The Deputy Commercial Tax Officer*<sup>13</sup> submitted that the branches of a company have no independent and separate existence. The company is one entity but its branches are not separate entities. The submission was that the definition of “person” has the effect of destroying the legal identity of the company. The definition of “person” creates an artificial entity unknown to law. We find no substance in the submission so made by the learned counsel for the appellant. The observations of this Court in **English Electric Company of India Ltd.** (supra) that the appellant company therein was “one entity and it carries on business at different branches. Branches have no independent and separate entity. Branches are different agencies” is to be understood in the proper context. The appellant company therein had branches at different places. The buyer at Bombay ascertained quotations for goods from the Bombay branch. The Bombay branch referred the enquiry to its Madras factory and on receiving reply quoted the prices and the Bombay buyer placed orders for the goods with the Bombay Branch but the goods were despatched from Madras though in the name of Bombay Branch at the risk of the Bombay buyer. It is under those circumstances this Court observed that when a branch of a company forwards a buyer’s order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. The observations so made have no bearing whatsoever on the issue with which we are concerned in the present case. G

43. The appellant-company herein continues to be

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<sup>12</sup> (1981) 3 SCC 23

<sup>13</sup> (1976) 4 SCC 460

- A company within the meaning of Section 3 of the Companies Act, 1956 which defines the "company", "existing company", "private company" and "public company" for the purposes of the Companies Act. Its status as one entity continues to be the same. It is only for the purposes of the present Act viz. Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 even its branches are treated as a "person" enabling the authorities to levy and collect profession tax.

44. Before parting with the case we are required to state that a challenge to the impugned provisions was mounted on the basis of Article 14 of the Constitution of India in the High Court. It was contended that the Andhra Pradesh State Legislature in enacting the definition to the word "person" and also Explanation No. I to the First Schedule of the Act acted arbitrarily and irrationally and thereby violated Article 14 of the Constitution of India. That contention was rejected by the High Court. The said contention is not urged before us. Therefore, we express no opinion on the same.

#### CONCLUSION:

45. For the aforesaid reasons, we hold the definition of the word "person" in the impugned Explanation and also Explanation No. I to the First Schedule of the Act is not intended to tax a person at a rate higher than Rs.2500/- per annum, per person, but to treat even a branch of a firm, company, corporation or other corporate body, any society, club or association as a separate person, and therefore, a separate assessee within the meaning of Section 2 (b) of the Act and the Andhra Pradesh State Legislature has undoubtedly the competency to adopt such a devise of taxation. The Andhra Pradesh State Legislature did not violate the mandate of Article 276(2) of the Constitution.

46. In the result, the appeals are dismissed with no order as to costs.

H K.K.T.

Appeals dismissed.