

PETITIONER:
R. R. ENGINEERING CO.

Vs.

RESPONDENT:
ZILA PARISHAD, BAREILLY & ANR.

DATE OF JUDGMENT 10/03/1980

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
KRISHNAIYER, V.R.
UNTWALIA, N.L.
SHINGAL, P.N.
KOSHAL, A.D.

CITATION:
1980 AIR 1088 1980 SCR (3) 1
1980 SCC (3) 330
CITATOR INFO :
R 1984 SC 420 (15)
R 1989 SC2015 (10)
C 1990 SC 781 (72)
RF 1991 SC1676 (30,35)
RF 1992 SC1383 (12,13)
RF 1992 SC2084 (8)

ACT:
U. P. Kshetra Samitis & Zila Parishads Act 1961-
Circumstances and Property Tax-Nature of tax-If a tax on
income or profession.
State Legislature, if competent to impose tax.

HEADNOTE:

Acting under the power conferred by section 108 of the District Boards Act, 1922 the District Board, Bareilly imposed "Circumstances and Property Tax" on persons according to their circumstances and property. In 1958 the powers and functions of the District Boards were vested in or were transferred to the Antarim Zila Parishads and later they were transferred to the Zila Parishads constituted under the U.P. Kshetra Samitis and Zila Parishads Act 1961. The 1961-Act empowered the Zila Parishads to impose the "Circumstances and Property Tax." It also provided that where before the appointed date there was in force "Circumstances and Property Tax" under the 1922 Act such tax may continue to be levied by the Zila Parishads at the same rates and on the same conditions under which it was being levied under the 1922 Act. The tax which till then was being levied by the District Boards was henceforth levied by the Zila Parishads.

Dismissing the appellants' writ petition impugning the constitutional validity of the Act the High Court held (1) that the tax on circumstances and property was a single tax possessing altogether a separate and distinct identity from other taxes and could neither be equated with a tax on professions, trades, callings or employments nor with a tax on property and (2) that the tax fell under the residuary entry of List I, namely, Entry 97 (any matter not enumerated

in any other Entry in List I or in any of the Entries in List II and III) and that it could be continued to be levied by virtue of Article 277 of the Constitution.

In CA 564 of 1973 the appellants were assessed to the tax by the Town Area Committee under the U.P. Town Areas Committee Act, 1914 as amended in 1950. The appellants' suit challenging the validity of the tax was allowed by the Munsiff on the ground that the tax on circumstances and property was in truth and substance a tax on income and since prior to the Constitution it was not lawful for the Town Area Committee to levy it, it was not saved by Article 277. The Civil Judge dismissed the appeal of the Committee. The High Court upheld the validity of the tax.

In appeal to this Court it was contended that the limitation contained in Article 276(2) of the Constitution cannot be transgressed by the State Legislature by adopting the subterfuge of imposing a consolidated tax by clubbing up two or more entries in List II, and that the State Legislature could not

2 exercise the power to levy a tax on circumstances and property by an artificial understanding on that expression so as to acquire power to impose a tax on income.

Dismissing the appeal,

^ HELD : 1. (a) There is a basic distinction between a tax on income and a tax on circumstances and property. While income tax can only be levied on income, tax on circumstances and property can be on the total turnover of the assessee from his trade or calling or the fact of his having an interest in property. For the levy of tax on circumstances and property it is not necessary that there should be income in the hands of the assessee, in the sense of the Income Tax Act. A person can be subjected to tax on circumstances and property in relation to the status which he occupies by reason of the pursuit by him of a beneficial calling or the possession by him of an interest in property. While determining the status of an individual for the purpose of the tax on circumstances, the total turnover of his business or avocation may, therefore, be legitimately taken into consideration. [8 G-H; 9 C-D]

(b) The fact that the tax on circumstances and property is levied on the basis of income which an assessee receives from his profession, trade, calling or property is not conclusive of the nature of the tax. It is only as a matter of convenience that income is adopted as a yardstick or measure for assessing the tax. The measure of the tax is not a true test of the nature of the tax and, therefore, while determining the nature of a tax, though the standard on which the tax is levied may be a relevant consideration, it is not a conclusive consideration. [9 E]

District Board of Farrukhabad v. Prag Dutt, AIR 1948 All 382 (FB), Zila Parishad, Muzaffarnagar & Anr. v. Jugal Kishore Ram Swarup and Anr. AIR 1969 All 40, approved.

Re. a Reference under Government of Ireland Act, [1936] A. C. 352; Governor-General in Council v. Province of Madras, 72 I.A. 91, 99, referred to.

2. (a) The tax is referable to Entry 49 (taxes on lands buildings) Entry 60 (taxes on professions, trades, callings and employments) and among other items to item 58 (taxes on animals and boats) of List II. The impugned tax is a composite tax, one of its components being the circumstances of the assessee. By 'circumstances' is meant his financial position, his status as a whole, which depends inter-alia on his income from his lands and buildings and from his trade

or calling. The tax is wide enough to cover certain other items in List II like Item 58 which relates to "tax on animals and boats". [12 H; 11 G-H]

The Notified Area Committee & Anr. v. Sri Ram Singhasan Prasad Kalwar. AIR 1970 Allahabad 561, approved.

(b) Yet the fact that one of the components of the tax, namely, the component of 'circumstances' is referable to other Entries in addition to Entry 60 should not be construed as conferring an unlimited charter on the local authorities to impose disproportionately excessive levies on the assesseees who are subject to their jurisdiction. [13 A-B]

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3. The High Court was wrong in holding that by reason of the fact that the circumstances and property tax is a composite tax and since the element of 'property' necessarily enters into that composition, the tax cannot be identified as a tax on professions, trades, callings or employments. It is also not correct to say that since the tax on circumstances and property did not place as an entry expressly enumerated in any of the three Lists of the Seventh Schedule it falls under the residuary entry, namely, Entry 97 of List I. It is erroneous to take resort to Article 277 for the purpose of saving the tax. The mere name of a tax does not bear on legislative competence and the absence of express enumeration of a tax by a particular name will not justify the tracing of legislative authority to the residuary entry. [13 D-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1528 of 1970.

From the Judgment and Order dated 23-5-1969 of the Allahabad High Court in Civil Misc. Writ No. 37/67

AND

Civil Appeal No. 564 of 1973.

Appeal by special leave from the Judgment and Order dated 29-11-72 of the Allahabad High Court in Second Appeal No. 2359 of 1966.

Yogeshwar Prasad, S. K. Bagga, Mrs. S. Bagga, Ashoke Srivastava and Mrs. Rani Chhabra for the Appellant in C.A. No. 1528/70.

E. C. Agarwala for the Appellant in C.A. 564/73.

K. C. Agarwala and M. M. L. Srivastava for the Respondent in C.A. 1528/70.

J. P. Goyal and S. K. Jain for the Respondent in C.A. 564/73.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J.-These are two appeals from Uttar Pradesh involving the validity of a levy which bears the somewhat unusual name of 'Circumstances and Property Tax'. Civil Appeal 1528 of 1970 is by certificate granted by the Allahabad High Court under Articles 132(1) and 133(1)(c) of the Constitution while Civil Appeal 564 of 1973 is by Special Leave granted by this Court.

The facts leading to Civil Appeal 1528 of 1970 are as follows:-

The appellant M/s. R. R. Engineering Company is a partnership firm engaged in the business of manufacture and sale of machinery, machine tools and as structural engineers. Its registered office is situated at Clutterbuckganj which was at one time within the local limits of the jurisdiction of the District Board of

Bareilly. Acting under the power conferred by section 108 of the District Boards Act, 1922,

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the District Board, Bareilly, by Resolution No. 3 dated February 18, 1928 decided to impose the 'Circumstances and Property Tax' on persons according to their circumstances and property. Rule 7 framed under section 172 of the Act for assessment and collection of the said tax was published on March 10, 1928, providing for the maximum assessment of Rs. 2,000/- on any single assessee. Later by a Notification dated November 29, 1933 the State Government directed under section 114(d) of the Act that the total amount of tax on circumstances and property imposed by a District Board on any single assessee shall not in any year exceed the sum of Rs. 2,000/-.

On April 20, 1958 the U. P. Antarim Zila Parishad Ordinance 1958 was enacted by the State Government, providing for the establishment of Antarim Zila Parishads for the internal administration of local self-Government in rural areas, thereby facilitating the establishment of Zila Parishads for the coordinated administration of affairs concerning economic and social planning and of local self-Government in the various Districts of Uttar Pradesh. The Ordinance was repealed by the U.P. Antarim Zila Parishad Act 1958.

In 1961, the U. P. Kshetra Samitis and Zila Parishads Act, 33 of 1961, was passed. By section 274 of that Act, the U. P. District Boards Act, 1922, was repealed as from the date Kshetra Samitis were established in a District, and the U. P. Antarim Zila Parishads Act was repealed as from the date on which the Zila Parishad was established in a District. The powers and functions of District Boards were vested in or were transferred to the Antarim Zila Parishads and from them to the Zila Parishads on their establishment in the District.

By section 119 of the U. P. Kshetra Samitis and Zila Parishads Act 1961, the Zila Parishads were empowered to impose the 'Circumstances and Property Tax'. Section 120 of that Act provides that where, before the appointed date, there was in force 'Circumstances and Property Tax' under the District Boards Act, 1922, such tax may continue to be levied by the Zila Parishad at the same rates and on the same conditions under which it was being levied under the District Boards Act. Section 121 provides that the total amount of the tax shall not exceed the amount as may be prescribed by rules framed under the Act. Rule 7 framed under section 172 of the District Boards Act, 1922, which provides for a maximum levy of Rs. 2,000/- on a single assessee, remains in force until the framing of rules under the Act of 1961.

The appellant's registered office which was situated within the jurisdiction of the District Board of Bareilly is now within the jurisdiction of the Zila Parishad, Bareilly. The Circumstances and Property Tax

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which was being levied by the District Board of Bareilly is now being levied by the Zila Parishad of Bareilly.

The appellant having been assessed to a tax of Rs. 2,000/- for the year 1965-66, filed Writ Petition 37 of 1967 in the High Court of Allahabad to challenge the constitutional validity of that tax. A learned single Judge referred the Petition to a Division Bench which in turn referred it to a Full Bench. The Full Bench consisting of Mr. Justice R. S. Pathak, Mr. Justice M. H. Beg and Mr. Justice H. C. P. Tripathi dismissed the Writ Petition but

granted certificate to the appellant to appeal to this Court under Articles 132(1) and 133(1)(c) of the Constitution.

In Civil Appeal 564 of 1973, appellants who are residents of Kuraoli, District Mainpuri, were assessed to Circumstances and Property Tax by the Town Area Committee of Kuraoli, for the years 1961-64. The tax was levied by the Committee under section 14(f) of the U.P. Town Area Act, 1914, as amended by the U.P. Town Area (Validation and Amendment) Act, 1950, which empowers the Town Area Committees to impose a tax on persons according to their "circumstances and property", not exceeding such rate and subject to such limitations and restrictions as may be prescribed.

The appellants filed a suit, 62 of 1964, to challenge the validity of the tax. That suit was decreed by the learned Munsif, Munsir, on the ground that the tax on circumstances and property was in truth and substance a tax on income and since, prior to the Constitution, it was not lawful for the Town Area Committee to levy it, it was not saved by Article 277 of the Constitution. The appeal filed by the Committee against that judgment was dismissed by the learned Civil Judge, Mainpuri, but in Second Appeal 2859 of 1966, the High Court of Allahabad by its judgment dated November 29, 1972, took a contrary view, allowed the Committee's appeal and directed the dismissal of the appellant's suit. The learned Single Judge who decided the Second Appeal, followed the Full Bench decisions of the High Court in (i) M/s R. R. Engineering Co. which has given rise to the companion appeal herein, namely, Civil Appeal 1528 of 1970, and (ii) The Notified Area Committee & Anr. vs. Sri Ram Singhasan Prasad Kalwar. Being aggrieved by the judgment of the High Court, the appellants have filed this appeal by Special Leave of this Court.

The three learned Judges who constituted the Full Bench of the High Court in R. R. Engineering Co. (supra) delivered separate judgments, coming ultimately to the same conclusion though not by

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the same process of reasoning. It was urged before the High Court that the tax in on 'circumstances and property' was a tax on professions, trades, callings and employments and therefore the total amount of tax in respect of any one person could not, by reason of Article 276(2) of the Constitution, exceed Rs. 250 per annum. It was further contended that though the proviso to Article 276(2) enables the levy of a tax on professions, trades, callings and employments in excess of Rs. 250/- per annum if in the financial year immediately preceding the commencement of the Constitution the tax was being imposed, the authority which is now seeking to impose the tax being different from the one which was imposing the tax immediately before the Constitution came into force, the proviso would have no application. Mr. Justice R. S. Pathak and Mr. Justice M. H. Beg rejected the contention that the tax on 'circumstances and property' was a tax on professions, trades, callings or employments. Consequently, they held that the limitation contained in Art. 276(2) of the Constitution to the effect that the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum was not applicable. Justice Pathak held that the tax on circumstances and property is a composite tax and although a person's status and property are two intertwined strands

which enter into the composition of the tax, the tax cannot be considered as consisting of two distinct taxes under a single denomination. According to the learned Judge, the tax on circumstances and property is a single tax possessing altogether a separate and distinct identity from other taxes and could neither be equated with a tax on professions, trades, callings or employments nor with a tax on property; that is to say, the constituent elements which enter into the composition of the tax could not be separated. On the question whether the circumstances and property tax levied by District Boards prior to the Constitution could be levied thereafter, the learned Judge relied upon Art. 277 of the Constitution as authorising the continued imposition of the tax. When the Constitution came into force, said the learned Judge, circumstances and property tax did not find a place in any of the three Lists of the Seventh Schedule and therefore it fell under the residuary entry, namely, entry 97 of List I which refers to any matter not enumerated in any other entry in List I or in any of the entries in Lists II and III.

Justice M.H. Beg largely shared the view of Justice Pathak that the tax on circumstances and property was a composite tax and not merely a tax on professions, trades, callings or employments and therefore,

7 the limit imposed by Art. 276(2) was not applicable to the tax. According to the learned Judge, the relevant enquiry in regard to the tax was as to what was the legal basis of the tax or the reason without which there could be no such tax. He answered that question by saying that the best answer one could give was that the tax on circumstances and property was a tax on the status of a person. The learned Judge shared the view of Pathak, J., that after the enactment of the Constitution, Art. 277 authorised the continued imposition of the tax.

Tripathi, J. followed an earlier Full Bench judgment of the Allahabad High Court and held that the tax on circumstances and property was in the nature of a tax on professions, trades, callings or employments. The limitation prescribed by Art. 276(2) would, therefore, be attracted, but the proviso to that article saved the imposition of the tax even if it was in excess of Rupees two hundred and fifty per annum because the tax was in force in the financial year immediately preceding the commencement of the Constitution and the Parliament had not by law made any provision to the contrary. The contention, that the Proviso would apply only if the authority imposing the tax after the enactment of the Constitution was the same which did so immediately prior to the Constitution was rejected by the learned Judge on the ground that what was important for the purposes of the Proviso was the identity of the purpose for which the tax was and is imposed, and the area of its operation, and not the identity of the authority imposing the tax.

In the companion Appeal, 564 of 1973, a different consideration arose in a significant respect, namely, that the tax was not in force in the financial year immediately preceding the commencement of the Constitution. The assessment having been made by the Town Area Committee under section 14(f) of the U.P. Town Areas Act, which was introduced by a post-Constitution amendment of 1950, the proviso to Art 276(2) had no application and therefore the levy in excess of Rs. 250 per annum could not be saved by the proviso, if the tax was in respect of professions, trades etc. A learned Single Judge of the High Court, however, upheld the validity of the tax following the Full

Bench judgment in R. R. Engineering Co. (supra).

Before us also, the main controversy centred round the application of Article 276, the contention being that the imposition of the impugned tax in excess of Rs. 250 per annum is invalid. It was urged by Mr. E. C. Agarwala, who appears on behalf of the appellant in Civil Appeal No. 564 of 1973, that although Entry 60 in List II empowers

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State Legislatures to levy tax on professions, trades, callings and employments, the exercise of that power is necessarily limited by Article 276(2) of the Constitution. The constitutional limitation, according to the learned counsel, contained in Article 276(2) must be given its full effect and that limitation cannot be transgressed by the State Legislature by adopting the subterfuge of imposing a consolidated tax by clubbing-up two or more entries in List II. Counsel further contended that the State Legislature cannot over-reach its taxing power by making an artificial definition of words and expressions used in the legislative entries. Just as it cannot, by an artificial definition of 'sale of goods', exercise a power to legislate in respect of a subject matter outside its sphere, it cannot exercise the power to levy a tax on 'circumstances' by an artificial and colourable understanding of that expression so as to acquire the power to impose a tax on income. Lastly, it was contended by Shri Agarwala, and by Shri Yogeshwar Prasad who appears in the companion appeal, that the power to levy a tax on 'circumstances not being incidental to the power to tax professions, trades, etc. the doctrine of pith and substance had no application and could not save the impugned tax on circumstances and property.

The nature and validity of the tax on 'circumstances and property' have agitated the minds of the learned Judges of the Allahabad High Court for a long time, as is evident from various Full Bench judgments, which are not quite consistent with one another, and some of which have even taken conflicting positions. In some cases decided by single Judges or Division Benches, the view was taken that the tax on 'circumstances and property' is a tax on 'income'. (Tata Oil Mills Co. Ltd. v. District Board of Allahabad; Western U. P. Electric Power and Supply Co. Ltd. Etawah v. Town Area Jaswant Nagar and Raghubir Singh v. Town Area Committee. The correct position is, however, the one which was pointed out by Malik C.J., in his Full Bench judgment in District Board of Farrukhabad v. Prag Dutt. The learned Chief Justice elaborated the point by dwelling upon the basic distinction between a tax on 'income' and a tax on 'circumstances and property'. It is trite that income-tax can only be levied on income, that is to say, it can be levied provided the assessee is in receipt of an income. If there is no income, there can be no income-tax. In contrast, the relevant consideration in the case

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of a tax on 'circumstances and property' can be the total turnover of the assessee from his trade or calling or the fact of his having an interest in a property. This consideration assumes relevance because the tax on circumstances and property is a tax, so to say, on the status of the assessee, in their endeavour to give to that tax a local name and habitation, in order perhaps to soften resistance to it, the learned Judges of the Allahabad High Court have described it as a tax on 'Haisiat' which, as far and as best as translation can go, means 'status'. For the levy of tax on circumstances and property, it is not necessary that there should be income in the hands of the

assessee, in the sense of the Income-tax Act. The outgoings, the deductions, the carry-forward losses, the development rebate and the like may leave no income in the hands of an assessee which could be brought to tax under the Income-tax Act. But a person can be subjected to tax on circumstances and property in relation to his 'Haisiat', that is to say, the status which he occupies by reason of the fact of the pursuit by him of a beneficial calling or the possession by him of an interest in property. While determining the status of an individual for the purposes of the tax on circumstances, the total turnover of his business or avocation may therefore be legitimately taken into consideration.

It may be, and is often so, that the tax on circumstances and property is levied on the basis of income which the assessee receives from his profession, trade, calling or property. That is, however, not conclusive on the nature of the tax. It is only as a matter of convenience that income is adopted as a yardstick or measure for assessing the tax. As pointed out in *Re a Reference under Govt. of Ireland Act*, the measure of the tax is not a true test of the nature of the tax. Therefore, while determining the nature of a tax, though the standard on which the tax is levied may be a relevant consideration, it is not a conclusive consideration. One must have regard in such matters, as stated by the Privy Council in *Governor General in Council v. Province of Madras*, not to the name of the tax but to its real nature, its pith and substance, which must determine into what category it falls. Applying these tests, the tax on 'circumstances' will fall in the category of a tax on "a man's financial position, his status taken as a whole and includes what may not properly be comprised under the term 'property' and at the same time ought not to escape assessment." This quotation finds place in the judgment of Malik C.J. in the Full Bench decision in

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District Board of Farrukhabad. (supra) The formulation, which the learned Chief Justice would appear to have extracted from another source, since he has put it within quotes, is in similar terms as that of this Court in *Pandit Ram Narain v. The State of U.P.* In that case an assessee challenged his liability to pay the tax on circumstances and property under section 14 (1) (f) of the U. P. Town Areas Act, 1914 on the ground that he did not reside within the jurisdiction of the Town Area Committee of Karhal and that Rule 3 framed under section 39 (2) of the Act was invalid. This Court, after referring approvingly to the decision in *District Board of Farrukhabad*, (supra) particularly to the statement therein that the name given to a tax did not matter and that what had to be considered was the pith and substance of it, observed:

A tax on 'circumstances and property' is a composite tax and the word 'circumstances' means a man's financial position, his status as a whole depending, among other things, on his income from trade or business.

The Full Bench decision under appeal in the instant case, *R. R. Engineering Co.* (supra) has taken the same view of the nature of the tax on circumstances and property by holding that it is not a tax on income but is a tax on a man's financial position, his status as a whole, depending upon his income from trade or business. Earlier another Full Bench of the Allahabad High Court had held in *Zila Parishad Muzaffarnagar v. Jugal Kishore* that the tax on circumstances and property is fundamentally distinct from and cannot be

equated with income tax, that it is not covered by item 82, List I, Schedule 7, of the Constitution and that it is essentially a tax on status or financial position combined with a tax on property. These decisions correctly describe the nature of the tax on circumstances and property. We affirm the view taken therein, especially that the aforesaid tax is not a tax on income.

But even though the impugned tax is not a tax on income, it is necessary to consider whether it is within the legislative competence of the State legislature and, if so, under which entry it would fall. The reason for such an inquiry is mainly two-fold: firstly, even if the tax on circumstances is within the legislative competence of the State legislature, being referable to entry 60 of List II which relates to taxes on professions, trades, callings and employments, it cannot exceed the limit of two hundred and fifty rupees per annum prescribed by Article 276(2) of the Constitution, unless the proviso to that article

11 is attracted: secondly, if the tax is beyond the legislative competence of the State legislature, being a composite tax not liable to be split up into distinct component parts, it will be necessary to examine whether the tax is saved by article 277 of the Constitution.

Article 276(1) of the Constitution provides that notwithstanding anything in article 246, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income. By clause (2) of that Article, the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum. The proviso to this clause says that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

Entry 49 of List II Seventh Schedule, relates to "taxes on lands and buildings" while Entry 60 of the same list relates to "taxes on professions, trades, callings and employments". Having already considered the true nature of the tax on circumstances and property, we are of the opinion that it is, in any event and at the least, referable to Entries 49 and 60 of List II. The profession, trade, calling or employment which a person pursues and the lands and buildings which he owns determine the status which he occupies. The impugned tax is a composite tax one of its components being the 'circumstances' of the assessee. By 'circumstances' is meant his financial position, his status as a whole, which depends, inter alia, on his income from his lands and buildings and from his trade or calling. That is the view which was taken by a Full Bench of the Allahabad High Court in *Zila Parishad, Muzaffarnagar & Anr. v. Jugal Kishore Ram Swarup and Anr.* (supra). Broome, J. who spoke for the court in that case observed that it was clear from

the very nomenclature of the tax that it was of a composite character and consisted of two components: a tax on property and a tax on circumstances. The tax on property was confined to immovable property and

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fell within the jurisdiction of the State Legislature by virtue of Item 49 of the State List while the tax on circumstances, that is to say, status or financial position, meant the tax on man's trade, business, profession or employment which was covered by Item 60 of the State List.

This question was also considered by a Special Bench consisting of Five Judges of the Allahabad High Court in The Notified Area Committee and Anr. v. Sri Ram Singhasan Prasad Kalwar. Mr. Justice S.N. Dwivedi who delivered the Judgment of the Special Bench traced the entire history of the impugned tax in reference to three periods: (1) the period prior to the 1935 Constitution Act; (2) the period between 1935 and 1950; and (3) the post-Constitution period. After a careful examination of the nature of the tax the learned Judge summed up the position thus:

To sum up, the history of the tax on circumstances and property after 1935 definitely shows that it was not a distinct and separate impost. The Government of India Act, 1935 and the Constitution treat it as a composite tax as its name suggests. As its constituents are already covered by one or the other entry in the legislative Lists, it is not enumerated as a category in the Lists as it was enumerated in the White Paper.

The conclusion to which the Special Bench came was that a tax on circumstances and property is a composite tax, that its components are varied, but that two of such components are firstly a tax on trades, callings, professions and employments and secondly, a tax on lands and buildings. In coming to this conclusion, reliance was placed by the learned Judge on the decision of the Supreme Court in Pandit Ram Narain (supra) and that of the Full Bench in the District Board of Farrukhabad (supra). But the amplification of the legislative authority which the Special Bench made is significant. It did not say as Broome, J. said in the Full Bench decision in the Zila Parishad, Muzaffarnagar (supra) that the tax on circumstances and property is referable only to two entries in List II namely, Entries 49 and 60. According to the Special Bench, the tax was wide enough to cover certain other items in List II, like Item 58 which relates to "taxes on animals and boats". We are of the opinion that the Special Bench was right in coming to this conclusion. Accordingly, we affirm its view that the tax on circumstances and property is referable to items 49 and 60 of List II of the Seventh Schedule, and amongst other items, to item 58 of that List. The validity of the tax has therefore to be upheld.

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While doing so, we would like to utter a word of caution. The fact that one of the components of the impugned tax, namely, the component of 'circumstances' is referable to other entries in addition to Entry 60, should not be construed as conferring an unlimited charter on the local authorities to impose disproportionately excessive levies on the assesseees who are subject to their jurisdiction. An excessive levy on circumstances will tend to blur the distinction between a tax on income and a tax on circumstances. Income will then cease to be a mere measure or yardstick of the tax and will become the very subject matter of the tax. Restraint in this behalf will be a prudent prescription for the local authorities to follow.

All that remains to be done is to express our inability to accept as correct the view taken by Mr. Justice R.S. Pathak and Mr. Justice M.H. Beg in R. R. Engineering Co. (supra) that by reason of the fact that the circumstances and property tax is a composite tax and since the element of 'property' necessarily enters into that composition, the tax cannot be identified as a tax on professions, trades, callings or employments. Our conclusion that the tax is referable, inter alia, to entries 49 and 60 of List II must necessarily result in the rejection of that view. The learned Judges were of the opinion, with which we are respectfully unable to agree, that since the tax on circumstances and property did not find place as an entry expressly enumerated in any of the three Lists of the Seventh Schedule, it falls under the residuary entry, namely, Entry 97 of List I. On that basis they held that Article 277 of the Constitution would save the tax since it was within the competence of the Parliament to impose it. In the view that we have taken, namely, that the impugned tax falls within the competence of the State Legislature by virtue of entries 49 and 60, inter alia, of List II, this part of the reasoning of the learned Judges has to be rejected. It is unnecessary and in fact erroneous to take resort to Article 277 of the Constitution for the purpose of saving the tax on circumstances and property. The mere name of a tax does not bear on legislative competence and the absence of express enumeration of a tax by a particular name will not justify the tracing of legislative authority to the residuary entry. What is true in other jurisdictions is true in this branch of law also, namely, that one must have regard to the substance of the matter and not to the form or label. We may also mention that in so far as the Town Area Committees are concerned, Article 277 will not save the impugned tax since it was levied by the Town Area Committee in pursuance of the power conferred by clause (f) of section 14 of the Town Areas Act, which was introduced by a post-Constitution amendment. We accept the reasoning

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of Mr. Justice S. N. Dwivedi in The Notified Area Committee, (supra) by which the Special Bench expressed its disagreement with the view taken by the two learned Judges in R. R. Engineering Co (supra) in regard to the application of Article 277 on the basis that the residuary entry is attracted.

For these reasons we uphold the validity of the tax on circumstances and property in both the appeals and dismiss the appeals with costs.

P.B.R.

Appeals dismissed.

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