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Court : Allahabad

Decided On : May-23-1969

Reported in : AIR1970All316

Judge : R.S. Pathak, ;M.H. Beg and ;H.C.P. Tripathi, JJ.

Acts : Uttar Pradesh District Boards Act, 1922 - Sections 108; Constitution of India - Articles 276, 276(2) and 277; Uttar Pradesh Zilla Parishad and Kshettra Samities Act, 1961 - Sections 270

Appeal No. : Civil Misc. Writ No. 37 of 1967

Appellant : R.R. Engineering Co.

Respondent : Zila Parishad, Bareilly and anr.

Advocate for Def. : S.N. Kacker and ;Sant Prakash, Advs.

Advocate for Pet/Ap. : J. Swarup and ;A.N.Verma, Advs.

Disposition : Petition dismissed

Judgement :

Pathak, J.

1. The District Board, Bareilly, by resolution No. 3 dated February 18, 1928, imposed circumstance and property tax in exercise of the powers Conferred by

Section 108 of the District Boards Act, 1922. By Notification No. 2049/ II/IX-342-11930 dated November 29, 1933 made by the State Government under Section 114 (d) of the Act, it was provided:

'The total amount of the 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.'

The tax continued to be levied for many years.

2. On April 20, 1958 the U.P. Antarim Zila Parishad Ordinance 1958 was enacted providing for the establishment of Antarim Zila Parishads for the interim administration of local self-Government in rural areas facilitating the establishment of Zila Parishads for the co-ordinated administration of affairs concerning economic and social planning and local Seif Government in the districts in Uttar Pradesh, The Ordinance was replaced by the U. P. Antarim Zila Parishads Act, 1958. It was followed by the U. P. Kshettra Samitis and Zila Parishads Adhiniyam, 1961. By Section 274 of the Act, the U. P. District Boards Act was repealed as from the date on which Kshettra Samitis were established in a district, and the U. P. Antarim Zila Parishads Act, 1958 was repealed from the date on which the Zila Parishad was established in a district.

3. The petitioner carries on business in Bareilly. Although the business is carried on within what were the local limits of the District Board, Bareilly and thereafter of the Antarim Zila Parishad, Bareilly the petitioner was never assessed to circumstance and property tax by those local bodies. Some time after the Zila Parishad. Bareilly was constituted, the petitioner, who was carrying on business within what were now the local limitsof the Zila Parishad, Bareilly received a notice on January 5, 1965 from the Zila Parishad demanding circumstance and property tax in the sum of Rs. 1,500 far, the year 1964-65. The petitioner objected, but upon the assurance of the Adhyaksha of the Zila Parishad that the matter would be looked into, it paid the sum demanded. In 1966 the petitioner received a bill for the year 1965-66 demanding circumstance and property tax in the sum of Rs. 2,000. The petitioner filed an objection contending that the levy was illegal and that the Zila Parishad had no power to levy it In particular, the petitioner contended that the Zila Parishad could not demand circumstance and property tax in excess of

Rs. 250 and relied upon Article 276 of the Constitution, The objection was rejected by the Zila Parishad, which issued a notice of demand dated August 20, 1966 requiring the petitioner to pay the tax levied. The petitioner has filed this petition praying for relief against the demand,

4. The case was first heard by me sitting as a single Judge. The petitioner contended that the demand contravened Article 276(2) of the Constitution declaring that the total amount payable by any one person to any local authority by way of taxes on professions, trades, callings or employments shall not exceed Rupees 250 per annum. The Zila Parishad relied, however, upon the proviso to Article 276(2) which excepted from the substantive provision of Article 276(2) a tax in force during the financial year preceding the commencement of the Constitution Imposed by a local authority on professions, trades, callings and employments even if the rate exceeded Rs. 250 per annum unless Parliament by law provided to the contrary. In reply to the submission of the petitioner that the proviso contemplated a local authority which was the same as that imposing the tax before the commencement of the Constitution and that the Zila Parishad, Bareilly could not be said to be the same as the District Board, Bareilly, the Zila Parishad relied upon Allahabad Canning Co., Bamrauli v. Commissioner of Allahabad Division Civil Misc. Writ. No. 2882 of 1966. D/- 20-2-1967 (All). Upon the submissions of learned counsel for the parties it appeared necessary that the view taken in that case should be reconsidered and accordingly the case was referred to a larger Bench. It was then placed before a Division Bench consisting of myself and Gulati, J., and as the Bench found itself unable to accept the view taken in Allahabad Canning Co., Bamrauli, Civil Misc. Writ No. 2882 of 1966, D/- 20-2-1967 (All) (Supra) it directed the case to be laid before a larger Bench, Accordingly, this case has now been laid before us.

5. The submissions of learned counsel for the parties proceeded on the assumption that circumstance and property tax is a tax on professions, trades, callings and employments. While the petitioner relied upon the substantive provision of Art 276 (2) the Zila Parisahd seeks to escape its severity by recourse to the proviso to that provision.

6. The first question, I think, is whether circumstance and property tax is a tax on professions, trades, callings and employments. Circumstance and property tax, it has been repeatedly laid down, is a tax bearing on the circumstances and property of a person. It is a tax on a person in relation to his status or, as it is said, his 'Haisiat'. It is also a tax in respect of his property. It is a composite tax, in relation to his status and property. Reference may be made to the decisions cited before us as to the nature of circumstance and property tax. In District Board of Farrukhabad v. Prag Dutt : AIR1948 All382 a Full Bench of this Court held that circumstance and property tax cannot be identified with a tax on income. Subsequently a Bench of this Court consisting of Agarwala and Chaturyedi, JJ., expressed the view in Tata Oil Mills v. District Board of Allahabad. 1955 All LJ 630 that circumstance and property tax was nothing else but a tax on income. This was followed by the decision in Western U. P. Electric Power and Supply Co. Ltd. v. Town Area, Jaswant Nagar : AIR1957 All433 , where Mootham & Srivastava, JJ., took the view that circumstance and property tax was a composite tax on property and circumstances. The Supreme Court laid down in Ram Narain v. State of U. P., : [1956]1SCR664 that a tax on circumstances and property was a composite tax and the word 'circumstance' means a man's financial position, his status as a whole depending, among other things, on his income from trade or business. We have also been referred to Bharat Kala Bhandar Ltd. v. Municipal Committee, Dhamangaon : [1966]59ITR73(SC) but that is a case concerned with a tax on professions, trades, callings or employments.

A tax on professions, trades, callings or employments is a tax imposed on a person because he carries on a vocational activity which can be described as a profession, a trade, a calling or an employment. It is neither in respect of his status nor of his property. An example of such a tax is that imposed by the U. P. Vriti, Vyapar, Ajivika Aur Sevayoian Kar Adhiniyam. 1965. The two taxes are different in quality. A tax on the circumstances and property of a person is a tax in respect of his status and his property. It is a composite tax, but nonetheless a single tax. Although the status of a person and the property of that person are the two Intertwined strands which enter into the composition of the tax, it is not possible to say that the tax can be considered as two distinct taxes under a single denomination. It is a single tax possessing a separate and distinct identity from, all other taxes. It cannot be confused either with a tax on professions, trades, callings or employments nor with a tax on property. It is a composite tax, and the constituent elements which enter into its composition cannot be separated. In that regard, I confess I am unable to agree with the contrary view expressed in Zila Parishad, Muzaffarnagar v. Jugalkishore Ramswarup : AIR1969 All40 where legislative sanction for the tax was traced to two distinct provisions in List II of the Seventh Schedule of the Constitution, namely Entry 49 relating to tax on lands and buildings and Entry 60 relating to tax on professions, trades, callings and employments. But having regard to the ultimate conclusion to which I have come in this case, I do not think reference to a larger Bench is called for.

7. Now, as the Supreme Court observed in : [1956]1SCR664 (supra) the word 'circumstance' means 'a man's financial position, his status as a whole depending upon, among other things, on his income from trade or business'. The income from trade or business may be only one of the considerations determining his status and there may be other considerations which enter into that determination. Since a man's standing in his trade or business may not be the only consideration determining his status, I find it difficult to accept that if a tax is levied with respect to the status of a person it must be considered as a tax in respect of his profession, trade, calling or employment But even if it be assumed that a tax with respect to the status of a person can be identified as a tax in respect of his profession, trade, calling or employment. It cannot be forgotten that the element of status does not by itself constitute circumstance and property Tax, The constituent element of property plays as essential a part in determining the quality of its composition. It appears to me that there can be no dispute that circumstance and property tax is a composite tax, and when the element of property necessarily enters into that competition I find it difficult to conceive that circumstance and property tax can be identified as a tax on professions, trades, callings or employments, which, as the plain language shows, is a tax exclusively related to the vocational activity of a person and has nothing to do with his property.

8. I may at once say that we are not concerned when determining the nature of circumstance and property tax, with the measure or quantum of the tax. The measure or quantum of the tax may bedetermined by reference to the income from

the vocational activities of a person and from his property. It is possible that a person may have no property and yet circumstance and property tax may be assessed in his hands quantified on the basis of his vocational income. The quality or nature of the tax is a thing apart from its measure or quantum.

9. Upon these considerations, in my opinion. Article 276(2) of the Constitution cannot be invoked by the petitioner.

10. The decision in Civil Misc. Writ No. 2882 of 1966, D/- 20-2-1967 (All) (Supra) dealt with circumstance and property tax but it proceeded on the basis that it was a tax falling within the contemplation of Article 276(2) of the Constitution. The learned Judges relied upon the decision of the Supreme Court in Ram Krishna Rani Nath v. Janpad Sabha, : AIR 1962 SC1073 . That case was concerned with Section 143(2) of the Government of India Act, 1935 and Article 277 of the Constitution and not with Section 142-A of the Government of India Act, 1935 and Article 276 of the Constitution. In the view that circumstance and property tax cannot be considered as a tax contemplated by Article 276(2) of the Constitution, the protection of the proviso to Article 276(2) cannot be invoked by the petitioner. And as that is the entire submission on the basis of which relief is claimed by the petitioner, the case could have ended here.

11. It may, however, be desirable to ascertain whether circumstance and property tax levied before the commencement of the Constitution can be continued, even thereafter. Article 277 of the Constitution provides, in my opinion, for the continued levy of such tax. It declares that a tax which immediately before the commencement of the Constitution was lawfully levied by a local authority for the purpose of a local area may, notwithstanding that the tax is mentioned in the Union List, continue to be levied and applied to the same purposes until provision to the contrary is made by Parliament by law. Circumstance and property tax was imposed in the constitutional context prevailing before the Government of India Act, 1935 came into force. It is not disputed before us that the tax continued as a valid imposition throughout, before the Government of India Act, 1935 was enacted and through all the years thereafter. Proceeding on that assumption, we must examine the effect upon that tax of the constitutional change over from the

Government of India Act, 1935 to the Constitution of India. When the Constitution of India came into force, circumstance and property tax still did not find place as an entry expressly enumerated in any of the three Lists of the seventh Schedule. But there is the 'residuary'entry, namely Entry 97 of List 1, which deals with any matter not enumerated in the previous entries in List I nor enumerated in List II or List III. It seems to me upon this that circumstance and property tax will now fall within the legislative competence of Parliament. That being so, the provisions of Article 277 come into play.

12. Circumstance and property tax was levied before the commencement of the Constitution by a local authority, and Article 277 declares that it may be continued to be levied and applied to the same purposes notwithstanding that the tax now falls in the Union List until provision to the contrary is made by parliamentary law. There was considerable argument before us as to the true understanding of the Supreme Court decision in Ram Krishna Ram Nath : AIR 1962 SC1073 . (Supra). It seems to me that what was said there applies fully to the case before us. On the reasoning which appealed to the Supreme Court in that case, the Zila Parishad, Bareilly can be identified with the District Board, Bareilly. The area for whose benefit the tax is to be utilised and substantially the purposes for which the utilisation is to take place continued to be the same. It is true that some additional functions have been conferred upon the Zila Parishad, but that, in my opinion, is merely an extension of the functions imposed in the scope of local self-Government. The rate of tax remains at the level fixed by the Notification of 1933 and the incidence of the tax has not been shown to have altered in any manner. In nature and effect, it continues to be the same tax. Article 277 of the Constitution ensures the continued levy of the circumstance and property tax demanded from the petitioner.

13. In the result, the writ petition is dismissed with costs.

M.H. Beg, J.

14. This reference to a Full Bench was occasioned by doubts entertained by my learned brethren R. S. Pathak and Gulati, JJ. about the correctness of the Division

Bench decision of this Court in Civil Misc. Writ No, 2882 of 1966, D/- 20-2-1967 (All) by Hon'ble Beg, C. J. and Hon'ble Dwivedi, J., where it was held that circumstance and property tax of Rs. 2,000/-, imposed upon the assessee for the year 1965-66 by the Zila Parishad Allahabad, was not hit by the provisions of Article 276(2) of the Constitution. This article reads as follows:--

'The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum.

Provided that if in the financial year Immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally, or in relation to any specified States, municipalities, boards or authorities.'

15. It appears from the Judgment of the Division Bench in Allahabad Canning Co.'s case. Civil Misc. Writ No. 2882 of 1966, D/- 20-2-1967 (All.) (supra) that the contention of the petitioner's counsel in that case was that the tax imposed upon the petitioner was not the same tax as was being imposed under the U.P. District Boards Act X of 1922 before the commencement of the Constitution. The submission seemed to be that the identity of the tax was altered if it was levied under a subsequent enactment by a different body. Relying upon the decision of the Supreme Court, : AIR 1962 SC1073 ., the Division Bench rejected this contention. It pointed out that even if the body levying the tax was different, the identity of the tax was preserved. The Divisional Bench observed that the U.P. District Boards Act of 1922 had not been repealed by the U. P. Antarim Zila Pari-shad Act of 1958 which was a temporary Act revived by an amending Act I of 1960 after a gap of at least 13 days from the expiry of the temporary Act. It seems to have been also contended by the petitioner's counsel there that an expired Act

could not be revived, but this contention was also rejected by the Division Bench. The case, was, however, decided on the assumption that the contention of the petitioner that the tax under consideration was one of the taxes mentioned in Article 276 of the Constitution was correct. Their Lordships observed:

'The law provided for the assessment of the tax on circumstances and property and fixing the amount of such tax as well as the resultant liability of a person to be assessed to such tax always remained in force, and will continue to be in force even after the assumed expiry of the Antarim Zila Parishad Act. Accordingly, the proviso to Article 276 will apply to the case.'

16. It may also be pointed out that the Supreme Court decision in the case of Ram Krishna Ram Nath. : AIR 1962 SC1073 . (supra), which was relied upon by the Division Bench, dealt with the application of Section 143(2) of the Government of India Act, 1935 which corresponds to Article 277 of the Constitution and not with Section 142-A which corresponds to Article 276 of the Constitution. Section 143(2) of the Government of India Act, 1935 enacted:

'143(2). Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authorities or body for the purposes of the province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty five, may, notwithstanding that those taxes, duties, accesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.'

17. It seems that no contention was advanced before the abovementioned Division Bench that the case of the petitioner before it did not fall within the purview of Article 276 inasmuch as a tax on the circumstances and property is not identical with a tax on a profession, trade, calling or employment with which Article 276 deals. It has been held recently by a Full Bench of this Court in : AIR1969 All40 , relying on the case of : [1956]1SCR664 , as follows:--

'In our view circumstances and property tax is leviable only on immoveable property (lands and buildings) or on financial status derived from profession, business or employment; and legislation in relation to such a tax is clearly within the competence of the said legislature by virtue of Items 49 and 60 of List II of the VII Schedule of the Constitution.'

In other words, although the circumstances and property tax may include a tax on a profession, calling, or employment, yet, it cannot be said to be confined to the limits of such taxes. It is a composite tax. I confess that I find the terms 'circumstances and property' to be very vague. But, the validity of the 'circumstances and property' tax as such has not been questioned before us either on the ground that it is too vague and wide a class or a subject to taxation that it is outside the competence of the State Legislature to impose a tax which may fall within its scope. This brings me to the facts upon which the petitioner now before us came to this Court and the questions which have been argued before us.

18. The petitioner is a partnership firm manufacturing machinery and machine tools and carrying on the business of structural engineers. Its business extends all over India, but the registered office of the partnership is located atClutter-buckganj within the area subject to the authority of the Zilla Parishad. Bareilly. This very area was previously subject to the authority of the District Board, Bareilly, which functioned under the U.P. District Boards Act. The District Boards ceased to exist from 1st of May, 1958, but their powers were vested in or were transferred to the Antarim Zila Parishads set up under the U.P. Antarim Zila Parishad Act of 1958. The U.P. District Boards Act X of 1922 was only repealed districtwise, by Section 274 of the U.P. Kshettra Samities and Zila Parishads Act XXXIII of 1961 (hereinafter referred to as the Act), from the date on which Kshettra Samitis were established in each district. The petitioner before us, on whom circumstances and property tax of Rs. 2,000/-, the maximum permissible under a rule notified on 25-9-1930 with reference to provisions of Section 114(d) of the U.P. District Boards Act, was imposed in 1965-66. objected to the payment of the tax on the ground that the levy was not the same as that made by the former District Board. The ground put forward for denying the identity of the tax imposed with what was being levied by the District Board before the Constitution was that the Kshettra Samitis and Zila

Parishads under the Act were legally different entities from the District Board under the repealed Act

19. Mr. Jagdish Swarup appearing for the petitioner drew our attention to the preamble of the U.P. District Boards Act of 1922 where the object of the Act was stated to be 'to make better provision for local self-Government in rural areas of the United Provinces' and to that of the U.P. Act No. XXXIII of 1961 which was intended to enable the Kshettra Samities and the Zila Parishads established in the districts of Uttar Pradesh under the Act to undertake certain governmental functions in furtherance of the principle of democratic decentralization of governmental functions and for ensuring proper municipal government in rural areas. I do not think there is any need to refer to the preamble of the two Acts for the purpose of showing that the District Boards functioning under the Act of 1922 were very different bodies from the Zila Parishads and the Kshettra Samities Bet up under the Act XXXIII of 1961. The preamble need only be referred to if there is any ambiguity in the interpretation of the provisions of an Act. There is no such difficulty before us in coming to the conclusion that the District Boards constituted under Chapter II of the U.P. Act X of 1922 and incorporated under Section 4 of that Act were entirely different in composition from the Kshettra Samities and Zila Parishads set UP under Chapter II of the U.P. Act XXXIII of 1961 and incorporated under Sections 5 and 17 of the Act performing the functions given in Chapter III of the Act. The separate identity of a corporate body Es sufficiently established by a separate incorporation which puts the seal of birth upon a new corporate entity.

20. The composition and Identity of the body which levies a tax is one thing, but the identity of the tax which is levied by a body is another matter. It is possible that even though the agency through which the tax is imposed is different, yet, the tax, -which continues to be levied through another governmental agency, is the same. It may not be out of place to mention here that the definition of the term 'State', given in Article 12 of the Constitution, includes all governmental authorities within the territorial limits of the State whether they operate at the State level or at lower levels. One of the questions of construction which arises before us is whether the Article 276(2) is applicable to the tax before us, and, if so, whether the proviso in Article 276(2) makes it imperative, as a condition precedent to the protection it

gives to certain taxes, that the tax for which protection is sought must be levied by the same body which levied it in the financial year immediately preceding the commencement ot the Constitution. It will be noticed that the proviso to Article 276(2) would only apply if the particular tax was being levied in the financial year immediately preceding the commencement of the Constitution, All the agencies through which the tax can be imposed are mentioned in the proviso, but the proviso does not anywhere enact that the continuance of the levy must also be by the very authority or agency through which the tax was being levied before the Constitution. Therefore, if Article 276(2) was really applicable to the circumstances and property tax imposed upon the petitioner, there was much to be said for adopting the interpretation accepted by the Divisional Bench in the Allahabad Canning Co.'s case. Civil Misc. Writ No. 2882 of 1966, D/- 20-2-1967 (All) according to which the identity of the body continuing to levy the tax was immaterial.

21. It, however, appears to me that we are bound to hold, in view of the authorities already mentioned above, that the tax before us is a composite tax and not merely a tax upon professions, callings, or employments. Therefore, it would not be correct to apply the limit imposed by Article 276(2) to such a tax at all. Hence, the question of invoking the aid of the proviso would not arise. Although, the circumstances and property tax may include a tax on an assessee's profession, calling, or employment, yet, the petitioner has not shown that the tax imposed upon him in the present case can be apportioned between a tax upon his business and a tax on his property. Nor has the petitioner taken up the case that the Zila Parishad of Bareilly is really taxing only a business or trade under the guise of taxing circumstances and property. The argument advanced on behalf of the petitioner proceeds on the basically incorrect assumption that a tax on circumstances and property must always be equated or Identified with a tax on a business, calling, or employment. If that assumption is erroneous, as it appears to me to be clearly, the main plank of the petitioner's attack upon the assessment is removed.

22. I may mention here that one of the grounds taken up by the petitioner was that imposition of the tax is entirely arbitrary. No attempt was, however, made to show

that the imposition of the tax was not correlated to the circumstances and property or the status of the petitioner. The burden of proving facts to justify such a contention lay upon the petitioner. As no argument was based on alleged arbitrariness in applying the maximum rate to the petitioner, it would be safe to assume that this ground has now been abandoned although taken up vaguely in the petition.

23. Learned counsel for the petitioner, in the course of argument, however, also relied on the provisions of Article 265 of the Constitution which prohibits the levy and collection of tax except by the authority of law. This provision only places the burden of showing the legal authority for the levy upon taxing authorities. The opposite parties, therefore, relied on provisions other than proviso to Article 276(2) also to justify the tax.

24. As it appeared, in the course of the hearing, that the tax in question could not be entirely covered by Article 276 of the Constitution, the learned counsel for the petitioner was asked what reply he had to give to the possible view that the tax in question, not being a tax confined to a tax upon a business or calling wholly, did not fall under Article 276 of the Constitution but could be covered completely by Article 277 of the Constitution which corresponds to Section 143(2) of the Government of India Act. Article 277 reads as follows:--

'Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.'

25. The answer which the learned counsel for the petitioner gave to thispoint of view was that Article 277 applies only to taxes 'mentioned in the Union List'. It was contended that this conclusion was reinforced by the provision that the tax would continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law. It was urged that unless the tax was specifically mentioned in the Union List it could not be protected by Article 277 of

the Constitution. It was pointed out that, in Ram Krishna Ram Nath's case, : AIR 1962 SC1073 . (supra), the Supreme Court was concerned with the validity of the 'terminal tax1 which was specifically mentioned as item 58 of the Federal List in the seventh Schedule of the Government of India Act, 1935 and is now found as item 89 of the Union List in the Seventh Schedule to the Constitution. It was submitted that the contention of the opposite parties themselves also was that the tax in question was covered by the proviso to Article 276.

26. It is true that the opposite parties had also primarily contended that the tax in question was protected by the proviso to Article 276. Learned counsel for the opposite parties, however, did not give up the alternative submission that it is also protected by Article 277 of the Constitution. Indeed, the learned counsel for the opposite parties relied upon 1955 All LJ 630 where a Division Bench of this Court held: 'The circumstances and property tax, therefore, being a tax on income, is saved by reason of the provisions of Article 277 of the Constitution, provided that it was lawfully levied prior to the commencement of the Constitution. The Act was valid when it was enacted in 1922 when there was no division of powers between the Centre and the Provinces, as was held in District Board, Dehra Dun v. H. Trotter : AIR1939 All389 . It continued to be valid even under the Government of India Act, 1935 by reason of the provisions of Section 143, Clause (2) of that Act read with the seventh Schedule. List I, item 54.'

27. The view adopted by the above mentioned Division Bench was that circumstances and property tax could be equated with income tax, and, therefore, was covered by item 82 of the Union List Agarwala, J., speaking for the Division Bench, interpreted the majority view of Dayal and B. Prasad, JJ. In : AIR1948 All382 to be that the tax on circumstances and property was really a tax on income. This view was sought to be supported by an application of the pith and substance rule and an examination of the provisions of Section 114 of the U.P. District Boards Act, 1922, indicating the character of a tax on circumstances and properly. The relevant part of Section 114 which may be reproduced here, reads as follows:--

'The power of a board to impose a tax on circumstances and property shall be subject to the following conditions and restrictions, namely:

(a) the tax may be imposed on any person residing or carrying on business in the rural area (provided that such person has so resided or carried on business for a total period of at least six months in the year under assessment);

(b) no tax shall be imposed on any person whose total taxable income is less than two hundred rupees per annum;

(c) the rate of tax shall not exceed four pies in the rupee on the total taxable income; and

(d) the total amount of tax imposed on any person shall not exceed such maximum (if any) as may be prescribed by rule.

Explanation-- For the purpose of this Section 'taxable income means estimated income,' but shall not include income of the following classes;

(i) 'agricultural income' as defined in the Indian Income Tax Act, 1922,

(ii) income on which any tax has previously been imposed under Section 128 of the United Provinces Municipalities Act, 1916,

(iii) income on which any tax has previously been imposed by any other board under Clause (b) of Section 108',

28. The Division Bench's view that circumstances and property tax could be identified with income tax was not accepted by the recent Full Bench in Zila Parishad Muzaffarnagar's case, : AIR1969 All40 , (supra).

29. I may respectfully point out that the nature of a tax cannot be conclusively shewn by the fact that its incidence is upon income. Even taxes upon professions, trades, callings, and employments can be viewed as taxes on income. It was for this reason, as Mudholkar, J. pointed out in : [1966]59ITR73(SC) , that Section 142-A of the Government of India Act and Article 276 of our Constitution were enacted. But for these provisions taxes on businesses, professions, callings, and

employments, could have been excluded from the State List as taxes on income. Article 276(1) clearly indicates that this was the reason for the provision. The incidence of taxes on circumstances and property will also generally fall on income. Again, income may be adopted as a yard stick for 'Quantifying' the tax as pointed out in S.C. Anand v. State of U.P. : AIR1969 All317 where the character of taxes covered by Article 276 was analysed by me (see at PP. 1009 to 1013 of All LJ):(at pp. 326 to 329 of AIR). But, neither Incidence of a tax on income nor the factthat income is its yardstick or measure for fixing the amount payable will determine the true character of a tax conclusively. The character of a tax is perhaps determined more accurately by answering the question; what is the legal basis of the tax or the reason without which there could be no such tax? in the case of a tax on circumstances and property probably the best answer one could give to such a question is that it is a status (haisiyat) to use the Hindi equivalent which is the legal basis or the subject matter of the tax. Circumstances (including income) or property may serve as Us sources or measures, but the resultant or the amalgam sought to be taxed could not perhaps be described more precisely than, by using the term 'status' for it. Could such a tax on the petitioner's 'status' be saved by Article 277?

30. Both Articles 276 and 277 occur in Chapter I on 'Finance', in Part XII of the Constitution, under the heading; Distribution of Revenues between the Union and the States'. Each of these two articles seeks to preserve for authorities within a State, including local government bodies, certain pre-Constitution taxes which may otherwise fall outside the competence of State bodies. Article 276(2), however, imposes an upper limit of Rs. 250/- per person per annum on a fresh tax of the nature indicated there and levied by any particular State or local authority, but Article 277 deals more generally with pre-Constitution taxation. Even if it could be urged that the subject matter of Article 276(2), which deals with impositions by particular authorities, should govern the scope of the proviso intended to exempt 'a tax' from the ambit of impositions which used to be made by particular authorities. St appears to me that the reference in Article 277 to 'taxes, duties, cesses, or fees' which were being lawfully levied by any of the authorities mentioned there was intended only to describe the kind of taxation which had been taking place before the commencement of the Constitution and not to confine the power of continued

taxation in future of the same character to the very authorities already in existence before the Constitution,

31. On the face of it, Article 277 of the Constitution means that if a tax fell within the class mentioned there it could be continued by an authority otherwise authorised to levy it and could be applied 'to the same purposes' as it had been applied before the commencement of the Constitution. It could be contended that the non obstante clause only removes the bar which may arise from a mention of the tax, duty, cess, or fees in the Union List. Even if the non obstante clause was held to cut down the scope of the apparently wide sweep of Article 277, it seemsto me that a tax on 'circumstances and property' of every kind, not having been mentioned either in the State List or in the Concurrent List, could only be covered by entry No. 97 of the Union List read with Article 248 of the Constitution. Entry 97 reads as follows: 'Any other matter not enumerated in List II or List III Including any tax not mentioned in either of those lists'. This entry thus mentions taxes not specifically mentioned in other lists. The Constitution makers must be deemed to be aware of the existence of a tax on 'circumstances and property', A tax covered by entry 97 seems to me to satisfy the requirement that a tax, to be protected by Article 277, must be mentioned in the Union List, Such a requirement for all taxes sought to be saved by Article 277 seems logical and implied, although it is not clearly expressed in the article, because taxation falling full within the competence of State legislatures does not require to be saved at all with the help of either Article 276 or of Article 277.

32. The next requirement for the protection given by Article 277 of the Constitution is said to be that the tax must be shewn to be applied for the same purposes as the pre-Constitution tax. On the language of Article 277 this seems to be a requirement for testing due application of proceeds of a tax only. Even if it were assumed to be a criterion for determining the character of a tax or for justifying its levy, the test does not seem to me to be capable of application with precision or strictness to taxation inasmuch as the very nature of a tax, as distinct from license fees, implies that it is not earmarked for specific purposes (see: The Himgir-Rampur Coal Co., Ltd. v. State of Orissa : [1961]2SCR537 . It is presumed that taxation is meant for the benefit of the public which results from expenditure

incurred or from schemes undertaken by State or local governmental authorities. A fulfilment of this broad purpose with reference to any particular area for which taxation takes place is all that could be required.

33. The areas for which District Boards were set up under Section 4 of the U.P. District Boards Act are identical with the areas for which Zila Parishada were set up under Section 17 of the Act. Both the District Boards as well as the Zila Parishads exercise their powers by means of resolutions and bye-laws operating in the districts under their authority. Section 174 of the U.P. District Boards Act enabled a District Board to make bye-laws for the purpose of promoting the health, safety, and convenience of the inhabitants of a district and for the furtherance of the administration of the district under the Act. Similarly, Section 239of the Act enables a Parishad to make bye-laws for the same area 'for the purpose of promoting or maintaining the health, safety, and convenience of the inhabitants of the rural area of the district and for the furtherance of the administration of this Act in the Khand and the District', There seems to be no real difference in the purposes stated in the two provisions.

34. A glance at the illustrative subjects given in Section 174(2) of the U.P. District Boards Act and their comparison with the much longer and more comprehensive list in Section 139(2) of the Act only indicates the growth of activities serving the same broad purposes. It appears to me that although the names of the bodies making the bye-laws have changed and the activities of the Zila Parishads and Kshettra Samities have become more extensive, yet, the broad purposes served by the District Boards set up under the U.P. District Boards Act are the same as those of the new bodies set up under the Act.

In judging the purposes of taxation by local Government bodies, the term 'purposes', as it is used in a constitutional provision, cannot be narrowly construed because, as already indicated, all taxation is presumed to be for public benefit. So long as the areas served remain the same, the purpose cannot be said to be altered by any expansion of activities or changes in the composition of the local Government authority imposing the same tax for corresponding purposes under a fresh enactment. The object of Article 277 of the Constitution appears to be to provide for continuance of pre-existing taxes in the same local areas for the same broad purposes. That continuity is not broken by the succession of a new statutory body imposing the same tax and expending its activities for the benefit of the public of the same area. Article 277 appears to me to be enough to save and continue the impugned tax for purposes which have also continued.

35. The difficulty in accepting the line of reasoning indicated above is caused by the ratio decidendi of the recent Full Bench decision in : AIR1969 All40 , (supra) where an attack upon the validity of the tax on circumstances and property was repelled from a different angle. It was held there that such a tax was within the competence of the State Legislature as it was covered fully by Entries 49 and 60 of List II or the State List of the Seventh Schedule of the Constitution, If the circumstances and property tax is fully covered by the State List, there is no need to seek the protection of either Article 276 or of Article 277 at all to justify its law under the Act. Indeed, both Articles 276 and 277 would becomeinapplicable if the circumstances and property tax is fully covered by the State List. As already indicated above, the presence of these articles in the Constitution, when Article 372 is there to save all laws existing before the Constitution until other provisions are made in that behalf, is explained by the need to bring within the competence of State and local governmental authorities and organs what would otherwise fall outside their taxing powers. Therefore, as soon as we adopt the line of reasoning and the ratio decidendi of the Full Bench decision in the case of Zila Parishad Muzaffarnagar : AIR1969 All40 , (supra), as we are bound to do unless we were to refer the case to a still larger bench, it becomes unnecessary to decide whether the proviso to Article 276(2) or Article 277 protects the levy under consideration. On this view of the law, the tax could be supported simply by the authority of a post constitution statutory provision of the State Legislature. It would not require any other authority of law to sustain it.

36. Our attention has been drawn to such a post-Constitution provision made by the U. P. State Legislature. This is Section 270 (a) of the Act which keeps alive, inter alia, any tax, rule, or bye-law or notification in force in a local area under tbe provisions of the U.P. District Boards Act X of 1922 until other provisions are made under the Act. Section 270(a) speaks also of other laws in force before 'the

appointed date', but, so far as taxes imposed under the provisions of the U.P. District Boards Act X of 1922 are concerned, this is immaterial. The impugned tax satisfies the requirements of Section 270 (a) of the Act.

37. The only answer given by the learned counsel for the petitioner to the abovementioned contention was that Section 270(a) could not conflict with the provisions of Article 276 of the Constitution. This reply presupposes that Article 276 of the Constitution really applies to a case of circumstances and property tax. It is only if neither Article 276 nor Article 277 of the Constitution could apply to the case that the Zila Parishad need rely, as it did, on Section 270(a) of the Act. Article 372 of the Constitution also saves law existing before the Constitution until altered by competent authority provided it is not hit by other provisions of the Constitution to which it is subjected. Articles 276 and 277 of the Constitution were meant to protect certain pre-Constitution taxes even if they were hit by other provisions of the Constitution. If, however, as held by the Full Bench in the Zila Parishad Muzaffamagar's case, : AIR1969 All40 , fsupra), the circumstances and property tax falls fully within the State List, there would be no conflict between the legislative spheres ofthe Parliament and State Legislatures when the State Legislature authorises t. Section 270 (a) of the Act thus seems to provide a complete answer to the petitioner's attack upon the circumstances and property tax imposed by the Zila Parishad.

38. I confess that I find some difficulty, with great respect in unhesitatingly accepting the view expressed by the Full Bench in the Zila Parishad Muzaffarnagar's case : AIR1969 All40 , as the terms 'Circumstances and Property' are too vague and undefined to be capable of being confined to Items 49 and 60 of List II of the Seventh Schedule. They could easily embrace other items mentioned in both State and Union Lists. Therefore,, I find entry No. 97 of the Union List I to be more appropriate for so vaguely described a tax. But, as the ultimate result will be the same whether the tax is held to be covered and protected by Article 277 or by Entries 49 and 60 of the State List. I do not think that this particular case would justify a reference by us to a still larger bench. We must, under the circumstances, follow the earlier Full Bench decision.

39. I may summarise my views as follows--

The conclusion reached by the Division Bench in Allahabad Canning Company's case. Civil Misc. Writ No. 2882 of 1966, D/- 22-2-1967 (All) (supra), that the continuance of the circumstances and property tax was legally justified, was correct, but the assumption on which it rested, that the tax was within the purview of Article 276 exclusively, cannot be said to be correct as it is inconsistent with the view that it is a composite tax as held by the Full Bench of this Court in the case of Zila Parishad Muzaffarnagar : AIR1969 All40 , (supra) following the Supreme Court's decision in Ram Narain's case. : [1956]1SCR664 , (supra). The view expressed by another Division Bench in Tata Oil Mills' case, 1955 All LJ 630 (supra), that such a tax is protected by Article 277 of the Constitution, could be justified on the footing that the tax falls under Item 97 of the Union List instead of by holding, as this Division Bench held, that it fell under Item No. 82 of the Union List which is there for 'taxes on Income other than agricultural income'. But, as the ratio decidendi of the Full Bench decision in Zila Parishad Muzaffarnagar's case : AIR1969 All40 , (supra), which we are bound to follow, was that circumstances and property tax is fully within the competence of the State Legislature, its levy did not need any authority beyond what is found in Section 270(a) of the Act to justify it on facts set up in the case before us.

40. This writ petition must, therefore, be dismissed with, costs.

Tripathi, J.

41. I concur with my learned brother Beg, J. that this petition must be dismissed, but my reasons are different.

42. The petitioner is a partnership firm having its registered office at Clutterbuckganj, Bareilly, which lies within the jurisdiction of the Zila Parishad of Bareilly. The petitioner-firm deals in the repairs and manufacture of sugar-cane machinery and machine tools. For the year 1964-65 the Zila Parishad Bareilly demanded and realised from the petitioner a sum of Rs. 1500/- as circumstances and property tax, and for the year 1965-66 it assessed a sum of Rs. 2000/-which is the maximum amount permissible, as circumstances and property tax on the

petitioner. The petitioner has filed the present writ petition challenging the validity of the aforesaid assessment and has, inter alia, prayed for the issue of 'a writ, order or direction in the nature of mandamus or any other appropriate writ, direction or order commanding the opposite parties not to recover from the petitioner the impugned tax, at any rate, not in excess of Rs. 250/- per annum.'

43. On reference, the petition came up for hearing before a Division Bench (Hon'ble Pathak and Gulati JJ.) where the respondents placed reliance on an unreported decision of another Division Bench (N. U. Beg, C. J. and S. N. Dwivedi, J.) in the case of the Allahabad Canning Co.. Bamrauli, Civil Misc. Writ No. 2882 of 1966 (All.) which completely covered the issues arising in the case. The Division Bench, however, felt some difficulty in accepting the dictum enunciated in the aforesaid decision and thought it expedient to refer the petition for consideration by a Full Bench. That is how the case has come up before us.

44. It is not disputed that prior to the commencement of the Constitution and even after such commencement but before the enactment of Kshettra Samities and Zila Parishads Act 1961, the U.P. District Boards Act (Act X of 1922) applied to the district of Bareilly and the rules framed thereunder permitted the imposition of a tax on circumstances and property upto the extent of Rs. 2000/-. It is also admitted that even after the repeal of the aforesaid Act the circumstances and property tax had been levied to that extent in the area under the Antarim Zila Parishad Act which came into force on the 29th of March, 1958.

45. Mr. Jagdish Swamp, learned counsel for the petitioner, has argued the case on the footing that the circumstances and property tax levied by the local bodies is in the nature of a tax in respect of professions, trades, callings or employments within the meaning of Article 276 of the Constitution. His contention, however, bthat under Clause (2) of the aforesaid Article the total amount payable in respect of any one person to the State or to any local authority in the State by way of such taxes cannot exceed Rs. 250/- per annum and the proviso to the aforesaid Article does not come into play in the instant case. It is contended that the proviso to Article 276 of the Constitution is in the nature of a saving clause intended to prevent sudden dislocation of the finances and working of the particular local

bodies which were in existence at the time of the commencement of the Constitution. But where new local bodies have been incorporated and constituted under different enactments, and the earlier ones have ceased to exist such new bodies being separate and distinct corporate entities from those which had been levying the circumstances and property tax on the eve of the Constitution, cannot take advantage of the proviso to continue levying such taxes beyond the permissible limit of Rs. 250/- per annum.

It is urged that for saving such a taxation under the proviso it is necessary that the local body levying such a tax is identical in its nomenclature, objective and area of operation with one which had been imposing such a tax before the commencement of the Constitution, and with the repeal of United Provinces District Boards Act, 1922 under Section 274 of the Kshettra Samities and Zila Parishads Act, the District Board of Bareilly ceased to exist and the Zila Parishad which was established and incorporated under Section 17 of the Act was a different and distinct entity than the former having a different and more comprehensive aim for its achievement and as such it cannot claim the benefit of the proviso to Article 276 of the Constitution. Mr, Jagdish Swarup contends that in the case of the Allahabad Canning Co., Bamrauli (supra) this aspect of the question was not canvassed before the Division Bench, with the result that the decision in that case requires reconsideration.

46. Having given my anxious consideration to the points raised by the learned counsel, I regret my inability to agree with him. In my opinion, the questions posed by the learned counsel were equally in view of the Division Bench which heard Civil Misc. Writ No. 2882 of 1966 (All), and the Division Bench, relying on a decision of their Lordships of the Supreme Court in : AIR 1962 SC1073 . has given correct answers to those questions.

47. In the light of the decision of the Supreme Court in : [1956]1SCR664 , a Full Bench of this Court, inter alia, held in the case of : AIR1969 All40 , that,

'circumstances and property tax is leviable only on immovable property (lands and buildings) or on financial status derived from profession, business or employment.'

In view of this Full Bench decision Mr. Jagdish Swarup conceded that the circumstances and property tax in the instant case was in the nature of a tax on professions, trades or callings, as envisaged under Article 276 of the Constitution. That being so, I have to determine the validity or otherwise of the aforesaid tax in the light of Article 276 only because the question relating to the applicability of Article 277 of the Constitution has not been seriously canvassed at the Bar from either side.

48. The relevant part of Article 276 of the Constitution reads:

'276 (1) Taxes on professions, trades, callings and employments. Notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum:

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, Municipalities, boards or authorities.' Clause (2) of the Article puts a ban on payment of tax on professions, trades or callings, referred to in Clause (1) in excess of rupees two hundred and fifty per annum to the State or to any local authority after the commencement of the Constitution. The proviso however calls out an exception and lays down that:

'Where 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 ...,.....'.

49. Mr. Jagdish Swarup has argued that the word 'such' which falls beforethe words 'municipality, board or authority' indicates that in order to take advantage of this proviso the Identity of the pre-Constitution and post-Constitution local bodies must be the same. I am unable to agree with this contention. It will be noticed that in Clause (1) of the Article the words used are 'the State or a municipality, district board, local board'. In the proviso the word 'such' has been used in a generic sense to distinguish the local bodies from the State and not from one another amongst themselves,

50. In the case of : AIR 1962 SC1073 the Supreme Court had, inter alia, observed:

'The principal contention however, raised on behalf of the appellant before the High Court was based upon a denial of the identity of the authorities--three Janpad Sabhas with the District Council, Bhandara which levied and collected the tax prior to April 1, 1937. The learned Judges of the High Court rejected this contention and held that the three Janpad Sabhas which replaced the District Council of Bhandara were in substance Identical with the 'latter principally for the reason that the area covered by the three newly created Janpads was the came as that for which the District Council functioned and that the purposes for which the tax collected would be utilized---which are the criteria specified in Section 143(2) -- were exactly the same. Just as it could not be disputed that if there were any change in the composition of the District Council the Identity of a local authority would not be altered for the purposes of Section 143(2), the mere splitting up of that local area for being administered by a plurality of Local Government units would not effect any change material for the purposes of the continued exigibility of the tax under Section 143(2). The learned Attorney-General therefore very properly did not press before us this point based upon the disappearance of the District Council and its being replaced by the respondent Sabhas as any ground for denying to the respondent-Sabhas the right to levy the tax.'

51. In the light of this observation it must be held that it is the identity of purpose for which the tax has been imposed prior to and in the post-Constitution era and the area of its operation which is of paramount importance and not the identity of the bodies levying such taxes. While delivering the judgment of the Division Bench in the case of Canning Company, Civil Misc. Writ No. 2882 of 1966, D/- 20-2-1967 (All) (Supra) Hon'ble Dwivedi J. referring to the aforesaid decision of the case observed as follows:--

'This case arose under Section 143(2) of the Government of India Act, 1935, the provisions of which were analogous toArt. 276 of the Constitution. In that case a terminal tax was originally levied under Section 51 of the Central Provinces and Berar Local Self-Government Act, 1920. Subsequently the said tax was continued to be levied by the Central Provinces and Berar Local Self-Government Act, 1948 which came into force on June 11, 1948. It may be noted that the Act of 1920 contemplated the formation of a District Council. Under the Act of 1948, however, these District Councils were replaced by Janpad Sabhas which comprised smaller areas. In spite, however, of the change in the nature of the groups that constituted councils and Janpads, and in spite of the fact that a new Act was enacted to continue the said tax, their Lordships of the Supreme Court held that the tax remained the same. In view of the principle laid down in this case we find it difficult to accept the contention of the learned counsel for the petitioner.'

52. I am in respectful agreement with this observation and propose to analyse the facts in its light.

53. The Kshettra Samitis and Zilla Parishads Act, 1961 provides for the incorporation of two separate entities. The Kshettra Samitis incorporated under Section 5 are to be a body corporate having perpetual succession and common seal. Same is the case with the Zila Parishads which are to be incorporated under Section 17 of the Act. The powers, functions and duties of the two bodies Incorporated under the Act are entirely distinct and their funds are separate from one another. A perusal of the various sections of the Act will indicate that while the Kshettra Samitis have been constituted 'to undertake certain Governmental

functions at Kshettra level', the Zila Parishads have been constituted 'for ensuring proper municipal Government in Rural Areas'. It must, therefore, be held that the object of the incorporation of the Zila Parishads is the same, namely 'to make proper provision for Local Self-Government in rural areas' as has been that of the Boards constituted under the District Boards Act, 1922. It cannot be disputed that there is no other local authority except the Zila Parishad which is making provisions for Local Self Government in the rural areas. There is no dispute also that the area of operation of the present Zila Parishads and the erstwhile District boards is the same.

54. Chapter VI of the Act deals with funds, property and contracts. Sections 99 and 100 which are relevant to the questions in controversy are these:

'99. Zila Nidhf and Kshettra Nidhi--

(I) There shall be established for each Zila Parishad a fund called Zila Nidhi and for each Kshettra Samiti a fund called Kshettra Nidhi, to the credit whereof shall be placed all sums received and all loansraised by or on behalf of the Zila Parishad or the Kshettra Samiti, as the case may be;

Provided that a Zila Parishad or a Kshettra Samiti shall earmark parts of the fund received by it for a particular purpose for that purpose and shall expend the same in carrying out that purpose.

(2) Nothing in this section shall affect any obligations of a Parishad or a Kshettra Samiti arising from a trust legally imposed upon or accented by it.

(3) A Parishad or a Kshettra Samiti may receive such contributions in cash or in kind as may be made by any person for any work of public utility and the Parishad or the Kshettra Samiti shall, thereupon, utilize the same together with Its contributions, wherever necessary, in executing such work.

100. Parishad to be local authority under the Local Authorities Loans Act.

(1) A Parishad shall be deemed to be a local authority as denned in the Local Authorities Loans Act, 1914, and shall be subject to all its provisions and the rules

made thereunder for the purpose of borrowing money under that Act.

(2) Subject to the provisions of Section 31 of the Reserve Bank of India Act, 1934 and with the prior sanction of the State Government a Parishad may raise loans in the open market by the issue of debentures in the manner and for the objects and subject to the conditions, including the condition of maintaining a sinking fund to be prescribed by rules.'

55. It is obvious that the two local bodies constituted under the Act have their separate funds and the Parishad alone is to be recognised as the local authority as denned in the Local Authorities Loans Act, 1950. Section 33 of the Act which defines the powers and functions of the Zila Parishad, read with Schedule II indicates that the primary function of the Zila Parishad is nothing else but to continue and improve upon the services which were formerly rendered by the District boards to the rural community in the matter of municipal Government. In view of these provisions I am of opinion that the District Boards constituted under the Act of 1922 and the present Zila Parishads are substantially identical in respect of their objectives, area of operation and the purposes for which the taxes were levied, collected and used by them.

56. Section 119 gives powers to the Zila Parishad to impose a tax on Circumstances and Property and Section 120 (1) provides for the continuance of Circumstances and Property tax. The relevant part of Section 120 (1) reads,

'Where immediately before the appointed date there was in force a tax on Circumstances and Property in any district imposed or continued under the UnitedProvinces District Boards Act, 1922, such tax shall until abolished or altered with the previous sanction of the State Government, continue to be levied by the Zila Parishad at the same rates and under the same conditions at and under which it was being levied under the Act........'

This section authorises the Zila Parishad to continue to levy at the same rates. The contention of the petitioner that Section 120 of the Zila Parishads Act is in contravention of Article 276 of the Constitution, and as such is either wholly void or cannot be held to authorise imposition of more than Rs. 250 per year as

Circumstances and Property tax, is, in my opinion, without any substance in view of the proviso to Article 276 of the Constitution.

57. Mr. S. N. Misra, learned counsel for the respondents, invited our attention to Section 270 of the Zila Parishads Act which provides for the continuation of appointments, taxes, budget estimates, assessments, made, issued, imposed or granted under the United Provinces District Boards Act or the Uttar Pradesh Antarim Zila Parishad Act or any other law tn force in any local area immediately before the enforcement of the Zila Parishads Act and to a Division Bench decision of this Court in the case of Tata Oil Mills Co., Ltd. v. The District Board of. Allahabad, 1955 All LJ 630 in which it was, inter alia, held that 'the circumstances and property tax being a tax on income is saved by reason of the provisions of Article 277 of the Constitution, provided that it was lawfully levied prior to the commencement of the Constitution'.

58. As however, the case was argued by the petitioner on the footing that such a tax was in the nature of a tax on professions, trades and callings and as I am satisfied that the points raised in support of this writ petition are fully covered by the Judgment of the Division Bench in the case of Allahabad Canning Co., Civil Misc. Writ No. 2882 of 1066, D/- 20-2-1967 (All), referred to above, with which I am in respectful agreement, I refrain from expressing any opinion on these points.

59. I will, therefore, dismiss this petition with costs.

60. By The Court - For the reasons set out in our respective judgments the writ petition is dismissed with costs. Petition dismissed.