Supreme Court of India
Spences Hotel Pvt. Ltd. And Anr vs State Of West Bengal And Ors on 15 February, 1991
Equivalent citations: 1991 SCR (1) 429, 1991 SCC (2) 154
Author: K Saikia
Bench: Saikia, K.N. (J)

PETITIONER:
SPENCES HOTEL PVT. LTD. AND ANR.

Vs.

RESPONDENT:
STATE OF WEST BENGAL AND ORS.

DATE OF JUDGMENT15/02/1991

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
PUNCHHI, M.M.

CITATION:
1991 SCR (1) 429 1991 SCC (2) 154
JT 1991 (1) 479 1991 SCALE (1)225

ACT:
West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972-Section 4-Luxury Tax-Imposition of flat or fixed rate on basis of air-conditioned floor space-Whether permissible, valid and legal.

HEADNOTE:
The appellant company was carrying on the business of running a hotel, bar and restaurant where it had provided air-conditioning. The second respondent, Collector of Calcutta, sought to levy luxury tax on the company under the provisions of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 calculated at the flat or fixed rate of an annual sum of Rs.100 for every 10 Sq. meters of the floor area provided with air-conditioning. The appellant's representation showing that the tax was discriminatory was rejected by the Collector. There-upon, the appellants read a petition in the High Court.

The appellants in their writ petition inter alia contended that the Act had imposed a flat rate on a specified air-conditioned floor space in hotels and restaurants which may be differently situated with reference to their localities, clientele, services and amenities

rendered, the Act made no distinction on any of these bases, as such it, did not even attempt a reasonable classification of these different types or categories of hotels and restaurants, hence it suffered from the vice of discrimination under Art. 14 of the Constitution.

Before this Court, the appellants while reiterating the contentions urged before the High Court, argued that the legislature while imposing a tax was bound under the Constitution to make appropriate classification and failure to do so resulting in clubbing dissimilar hotels and restaurants for the purpose of luxury tax amounted to an error by inaction; where the incidence of a tax was distributed in a manner which was irrational or arbitrary or where lack of classification created inequality, the tax would be violative of Article 14; and the provision for air-conditioning had no direct nexus with the income earned by the different hotels and restaurants, and on the same ground section 4 of the luxury tax Act must be declared violative of Article 14 of the Constitution.

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On behalf of the respondents it was contended that the legislature had made the classification in selecting the hotels and restaurants for the purposes of luxury tax in as much as only the air-conditioned hotels and restaurants had been subjected to tax; that the legislature had the widest latitude in the matter of such classification. and that a system of taxation need not be absolutely perfect and micro division and mini classification may not always be made.

Dismissing the appeal this Court,

HELD: (1) A taxing statute will be struck down as violative of Art. 14 if there is no reasonable basis behind the classification made by it, or,if the game class of property, similarly situated, is subjected to unequal taxation. [442G]

Kunnathat Thathunni Moopil Nair v. The State of Kerala, [1961] 3 SCR 77; I. T. O. v. Lawrence Singh, AIR (1968) SC 658=(1968) 2 SCR 165; State of Andhra Pradesh v. Nalla Raja, AIR (1967) SC 1458 1967] 3 SCR 28, referred to.

(2) The luxury tax charged under section 4 of the Act is a tax on the mere provision for luxury and not on the hotel property or equipment. The measure or unit and the rate of taxation are uniform for all within the group subjected to tax. Further classification within the group was not considered necessary by the legislature which had wide latitude in the matter of classification keeping in view the nature of the taxable event. The tax therefore could not be said to be discriminatory. [447D-F]

(3) Whether a particular tax is discriminatory or not must necessarily be considered in light of the nature and incidence of that particular tax and cannot be judged by what has been held in the context of other taxes except the general propositions. The precedents relating to property taxes such was as land tax, building tax, plantation tax,

and even income tax or a service tax will not be of direct relevance to a luxury tax, as it is neither a property tax, nor an income tax but a tax on the provision for luxury. In case of tax on provision for luxury different aspects peculiar to the tax have to be borne in mind. [443G]

(4) What exactly is meant by equality in taxation may, have to be looked at from different angles in different kinds of taxes. [444E]

(5) The ability or capacity to pay has no doubt been regarded as

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the test in determining the justness or equality of taxation. It is the goal towards which the system has been, as it must be, steadily working. [444C]

(6) Taxation will not be discriminatory if, within the sphere of its operation, it affects alike all persons similarly situated. It, however, does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. [445F]

(7) The equal protection of the law's provision in our Constitution prohibits a discrimination by the State against its own citizens as well as to one in their favour in imposing the luxury tax. The provision requiring luxury tax to be equal and uniform has to be interpreted in light of its characteristics. The luxury tax is 'uniform' as it is equal upon all persons belonging to the described class upon which it is imposed, namely, the owners of air-conditioned hotels and restaurants. [446G-H]

(8) Equality and uniform policy means uniform and equal rates of assessment and taxation which has been followed in this tax. The concept of equality and uniformity has to adjust from time to time to new and advancing social and economic conditions and needs of public finance and fiscal policy, of course within constitutional limitations. [447B]

Express Hotels Private Ltd. v. State of Gujarat , [1989]3 SCC 677; New Manek Chowk Spinning and Weaving Mills Co Ltd v. Municipal Corporation of the City of Ahmedabad, [1967] 2 SCR 679; Ram Prasad Narayan Sahi & Anr. v. The State of Bihar, [1954] 4 SCR 1129; Steelworth v. State of Assam, [1962] Supp. 2 SCR 589; Ganga Sagar Corpse. v. State of U.P., AIR [1980] SC 286: [1980] 1 SCR 769; Khyerbari Tea Co. v. State of Assam, AIR (1964) SC 935; State of Kerala v. Haji K. Haji K. Kutty Naha, [1969] 1 SCR 645; Spences Hotel Pvt. Ltd. v. State of West Bengal, [1975] Tax L.R. 1890; East India Hotels Ltd. v. State of West Bengal, AIR (1990) 6 SCR 2029; State of Rajasthan v. Mukachand and Ors., [1964] 6 SCR 903; State Of Maharashtra & Ors. v. Madhukar Balkrishna Badiya & Ors., [1988] 4 SCC 290; Twyford Tea Co. Ltd. & Anr. v. The State of Kerala, [1970] 3 SCR 383; Elel Hotels and Investments Ltd. & Ors v. Union of India, [1989] 3 SCC 698; Gopal v. State of U.P., [19641 4 SCR 869; Ravi Verma v. Union of India, AIR (1969) SC 1094;

(1969) 3 SCR 827; D.S. Nakara v. Union of India, [1983] 1 SCC 305 and Bank of Baroda v. Rednam Negachaya Devi, [1989] 4 SCC 470.

JUDGMENT:

CIVIL APPELLATE JURISDICTION CIVIL: Civil Appeal No. 406 of 1976.

Appeal by Certificate from the Judgment and Order dated 2.1-1975 of the Calcutta High Court in Appeal No. 137 of 1974.

G.L. Sanghi, Dhruv Mehta, Aman Vachhar and S.K. Mehta for the Appellant.

Tapas Ray and G.S. Chatterjee for the Respondents. Harish N. Salve, Lalit Bhasin, Ms. Nina Gupta, Vibhu Bhakru, Pranab Mullick and Vineet Kumar for the Intervener.

The Judgment of the Court was delivered by K.N. SAIKIA, J. This appeal by certificate is from the Judgment of the Calcutta High Court dated 2.1.1975 dismissing the appeal No. 137 of 1974.

The second appellant is a share-holder and Director of the first appellant Company M/s. Spences Hotel, Pvt. Ltd. hereinafter referred to as 'the Company' having its registered office, and carrying on the business of running a hotel, bar and restaurant, at No. 4 Wellesley Place Calcutta. The said hotel, bar and restaurant have been provided by the Company with air-conditioning through a central air-conditioning plant which, according to appellants, would normally run between months of March and October each year remaining unused for the rest of the year.

The second respondent, Collector of Calcutta by his Memo No. 4600(86) A.T. dated November 9, 1972 directed the company to make ad hoc payment of tax under the provisions of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 (W. B. Act XXI of 1972) hereinafter referred to as 'the Act', calculated at the flat or fixed rate of an annual sum of Rs. 100 for every 10 sq. metres or part thereof in respect of so much of the floor area of the hotel which was provided with luxury i.e. air- conditioning. Again by Memo No. 1161/A.T. dated 13.3.1973 the second respondent called upon the Company to expedite the submission of the blue print of the space provided with means for air-conditioning, failing which appropriate legal action would be taken. The second appellant submitted a representation showing that the tax was discriminatory and, therefore, illegal and void, but the second respondent by his Memo No. 5166/ A.T. dated 22.12.1972 replied that there was nothing discriminatory in it.

The appellants in their writ petition under Article 226 of the Constitution of India in the High Court of Calcutta contended that the provisions of the Act and the Rules framed thereunder, enabling the respondents to levy luxury tax, were unconstitutional and void, and consequently the notices and memos issued to the appellants were without jurisdiction and amounted to colourable exercise of power practising fraud on legislative powers; and it was prayed inter alia that the Act and the Rules

framed thereunder be declared illegal and void being ultra vires the constitution of India; that a writ of mandamus or any other appropriate writ be issued commanding the respondents and each of them not to give any or any further effect to the Act, Rules, and the notices.

A learned Single Judge dismissed the writ application by order dated March 6, 1974 but granted stay of operation of his order till April 30, 1974 on which date the appellants preferred therefrom the appeal No. 137 of 1974 and the Division Bench also granted stay pending the appeal but directed the appellants to deposit a sum of Rs.6,000 towards luxury tax with the Registrar of the High Court, which the appellants did; and after hearing by the impugned Judgment and order dated January 2, 1975 dismissed the appeal, but granted certificate of fitness to appeal therefrom to this Court.

In the High Court it was first contended by the appellants that under Entry 62 of List 11 of the Seventh schedule taxes could be imposed only on luxuries i.e. obj- ects or articles of luxury, but the impugned Act instead of imposing tax on air-conditioners as articles of luxury has imposed tax on air-conditioned floor space and as such it was a property tax on the basis of floor space and not a tax on any apparatus, instrument of articles of luxury and as such ultra vires the powers of the state legislature. The second contention was that Section 4 of the Act imposes a flat rate of Rs. 100 per annum on a specified air- conditioned floor space in hotels and restaurants which may be differently situated with reference to their localities, clientele, services and amenities rendered and the Act makes no distinction on any of these bases and as such it did not even attempt a reasonable classification of these different types or categories of hotels and restaurants, and, therefore, it suffered from the vice of discrimination under Art. 14 of the constitution.

Mr. G. L. Sanghi, the learned counsel for the appellants, fairly submits that in view of the Constitution Bench decision in Express Hotels Private Ltd. v. State of Gujarat and Anr, [1989] 3 SCC 677, before which Bench the West Bengal petition was also there, the above first contention stands concluded against the appellants. The second contention, however, according to counsel, was not urged before the Constitution Bench and as such is still open to the appellants. Reiterating that contention counsel submits that the State has levied luxury tax at a flat rate of an annual sum of Rs. 100 for every 10 square metres, or part thereof in respect of so much of the floor area of a hotel which is provided with luxury irrespective of the locality, quality, standard or size of the hotels and restaurants; there is no attempt whatsoever by the State to classify and in fact the tax is sought to be imposed indiscriminately without discernment; and there is total failure on the part of the state in not recognizing the inherent differences in hotels and restaurants. Counsel produces a list of classified hotels which according to him, clearly shows vast differences between different hotels and this is magnified not only by the fact of different rates charged but also different kinds of services/facilities provided. The appellants also refer to criteria for one star hotels, which, it is submitted, show that the levy of tax on floor area has no nexus with the subject of tax, namely, luxuries. Regarding the flat rate it is submitted that this Court has in more than one case deprecated the practice of imposition of tax at flat rate and he relies on the decisions in Kunnathat Thathunni Moopil Nair v. The State of Kerala and Anr., [1961] 3 SCR 77 (90-92); New Manek Chowk Spinning and Weaving Mills Co. Ltd. & Ors., v. Municipal Corporation of the City of Ahmedabad & Ors., [1967] 2 SCR 679 (692) and State of Kerala v. Haji K. Haji K. Kutty Naha & Ors., [1969] 1 SCR 645 (649). Counsel further submits that there is no nexus or co-relation between floor and space of a

hotel and the extent of luxury provided on account of air-conditioning and the provision for air-conditioning or air-cooling is not a material factor which would determine the extent of use and benefit and quantum of income to be received from a given area of air-conditioning floor space. Depending on the quality and nature of several other amenities provided by hotels and restaurants, some of these establishments are able to give more space per capita to their residents and customers for a certain rate or rent or price than other hotels and restaurants of different standards, although both are air-conditioned or air-cooled. It is submitted that a very old hotel of otherwise poor standard situated in the outskirts of the city and an ultra modern expensive hotel with excellent amenities situated in the best locality would be charged with the same amount of luxury tax if the extent of floorage of both were the same, only because both are air-conditioned. This clubbing of unequals for the purposes of imposition of luxury tax is discriminatory. "Because my hotel is situated outside the congested area and my space is wider and my rooms are bigger and my floor space is more should I be made to pay more tax than the five stars hotels whose earnings and rates are much higher than those of mine?" According to counsel the legislature while imposing a tax is bound under the Constitution to make appropriate classification and failure to do so resulting in clubbing dissimilar hotels and restaurants for the purpose of luxury tax amounts to an error by inaction.

Mr. H.N. Salve, the learned counsel for the intervener M/s East India Hotel Ltd., submits that where the incidence of a tax is distributed in a manner which is irrational or arbitrary or where lack of classification creates inequality, the tax would be violative of Article 14 of the Constitution of India. In the instant case, according to counsel, neither the charge, nor the rate, but the 'measure', that is the air-conditioned floor space of assumed homogeneity or uniformity that suffers from the vice of non-classification causing inequality in incidence of the tax.

Mr. Tapas Ray, the learned counsel for the respondents, submits, inter alia, that the Legislature made the classification in selecting the hotels and restaurants for the purpose of luxury tax inasmuch as only the air- conditioning hotels and restaurants have been subjected to tax and non-air-conditioned ones left out. The Legislature, counsel submits, has the widest latitude in the matter of such classification and so long as luxury has been defined with reference to a named space, namely, air-conditioned hotels and restaurants, there could be no question of infringement of Article 14. The prescribing of a flat or a fixed rate for a certain measure of air-conditioned space would also not amount to discrimination all such air- conditioned space being treated equally. A system of taxation, it is submitted, need not be absolutely perfect and micro division and mini classification may not always be made.

The precise question, therefore, is whether Section 4 of the Act can be held to be ultra vires the Article 14 of the Constitution of India for failure to make required classification and for imposition of luxury tax on flat or fixed rate only on the basis of air-conditioned floor space.

The Act is one "to provide for the imposition of taxes on entertainments and luxuries in hotels and restaurants". As defined in Section 2(b) "entertainment" means any exhibition, performance, amusement, game, sport, cabaret, dance or floor show and includes performance by any singer, musician or bandsman provided in any hotel or restaurant. As defined in 2(ca) "hotel" means a

building or part of a building or any place where any activity or business is carried on in providing lodging or boarding or any kind of accommodation, with or without supply of food, drinks or refreshments, to the members of the public on payment or for any consideration with the object of making profit. As defined in clause (h) "restaurant" includes an eating-house. "Luxury" as defined in clause (d) means provision for air-conditioning through air-conditioner or central air-conditioning or any other mechanical means provided in any of the rooms, or in any part of a building which constitutes a hotel or restaurant; and "luxury tax" as defined in clause (e) means a tax levied under Section 4 of the Act.

Section 4 is the charging Section dealing with liability for luxury tax. At the relevant time it said:

> "There shall be charged, levied and paid to the State Government a luxury tax by the proprietor of every hotel and restaurant (in which there is provision for luxury) and such tax shall be calculated at the rate of an annual sum of rupees one hundred for every ten square metres or part thereof in respect of so much of the floor area of the hotel which is provided with luxury."

For appreciation of the rival arguments it is necessary first to ascertain the taxable event in the above provision. The question is whether the taxable event is the existence or provision for air-conditioning or its use or income derived from it. In Spences Hotel Pvt. Ltd. v. State of West Bengal, reported in 1975 Tax L.R. 1890 (1892) the Calcutta High Court took the view:

"In view of the social and economic structure of our country there can be no doubt that an air-conditioned space whether in hotel or in a restaurant is a luxury by itself. People enter into these spaces for enjoyment of a luxury..... The comfort that a person derives in a hot summer day in an air- conditioned space is a luxury particularly in the context of the conditions in which the masses live in India today. In our opinion, the State legislature is competent to impose a tax on this luxury."

This Court approved the above view in Express Hotels Pvt. Ltd. case (supra). The submission that as Section 4 of the West Bengal Act envisaged a tax on the mere existence for the provision of the luxury even if luxury was not utilized by any person and hence it was beyond the scope of the legislative entry was rejected observing that the concept of luxuries in the legislative entry took within it everything that could fairly and reasonably be said to be comprehended in it. On a perusal of Section 4 of the Act there arises no doubt that it is the provision for air-conditioning to the measure of space which is the taxable event and not the articles or properties through or by which it is provided nor the income derived therefrom. As has been observed in East India Hotels Ltd. v. State of West Bengal and Ors., AIR 1990 SC 2029, the submission that there must be both giving and receiving of luxury and that a tax on the mere existence of luxury would be insufficient to support a law imposing the tax was not accepted and it was held by this Court that taxable event need not necessarily be the actual utilisation or the actual consumption of the luxury and that a luxury which can reasonably be said to be amenable to a potential consumer does provide the nexus for valid enactment. Mr. Salve correctly submitted that the charging event is the provision for air-conditioning in a hotel or restaurant as a luxury. Thus the taxing event is the provision for

air-conditioning in hotels and restaurants, its mere existence, irrespective of the means of doing so and irrespective of its utilisation or the income derived therefrom. The arguments regarding discrimination, therefore, must be relevant to this taxing event.

We may now examine the cases relied on by the parties. Kunnathat Thathunni Moopil Nair v. The State of Kerala and Anr.(supra) is a case on land tax and not a tax on service or provision. By Section 4 of the Travancore Land Tax Act 1955 as amended by Act 10 of 1957 all lands in the State of whatever description and held under whatever tenure were to be charged and levied a uniform rate of tax to be called the basic tax. Section 7 gave power to the Government to exempt from the operation of the Act such lands or class of lands which the Government might by notification, decide. The appellants forest owners challenged the provisions of the Act on the ground of contravention, amongst others, of Article 14 of the Constitution in asmuch as the Act did not have any regard to the quality of the lands or its productive capacity and the levy of a tax at a flat rate of Rs.2 per acre imposed very unreasonable restrictions on the right to hold property. A Constitution Bench of this Court held that a taxing statute was not wholly immune from attack on the ground that it infringed the equality clause in Article 14, though the courts were not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the court might think more just and equitable. Examining the provisions this Court observed that the Act had no reference to income, either actual or potential, from the property sought to be taxed. It obliged every person who held land to pay the tax at a flat rate prescribed, whether or not he made any income out of the property, or whether or not the property was capable of yielding any income. It was also observed that ordinarily a tax on land or land revenue was assessed on the actual or potential productivity of the land sought to be taxed and the tax had reference to the income actually made, or which had been made with due diligence, and, therefore, tax was levied with due regard to the incidence of the taxation. Under the provisions of the Act as some persons owning and possessing the same area of land, but earning no income, the land being arid desert, others earning only some income by raising possible crops making heavy investments, and others earning income sufficient to pay the tax only, while still others earning sufficient income out of the fertile land, the tax would affect the pockets of the different owners differently. This Court accordingly held that inequality was writ large on the Act and was inherent in the very provisions of the taxing section and that there was no attempted classification and nothing more need be said as to what could have been the basis for the valid classification. It is accordingly argued both by Mr. Singhvi and Mr. Salve that in the instant case the provision for air-conditioning has no direct nexus with the incomes earned by the different hotels and restaurants and on the same ground Section 4 of the Act must be declared violative of Article 14 of the Constitution.

State of Kerala v. Haji K. Haji K. Kutty Naha & Ors. (supra) was a case challenging Section 4 of the Kerala Buildings Tax Act, 1961. Under that section buildings constructed after the coming into force of the Act and having a floor area of one thousand square feet or more were subjected to tax on a graduated scale. The tax was levied on the basis of floor area only and no classification was attempted. It was held that in enacting the provision no attempt at any rational classification had been made by the Legislature and it had not taken into consideration the class to which a building belonged, the nature of construction, the purpose for which it was used, its situation, its capacity for profitable user and other relevant circumstances which had a bearing on the matters of taxation.

Merely the floor area of the building was adopted as the basis of tax irrespective of all other considerations. This Court observed that the law by which a tax was levied must not be inconsistent with any provision of the Constitution and that the validity of the taxing statute was open to question on the ground that it infringed the fundamental rights. When objects persons and transactions essentially dissimilar were treated by the imposition of a uniform tax, discrimination might itself in some cases result in denial of equality. This Court further observed that in view of the inherent complexity of fiscal legislation a larger discretion was available to the Legislation in the matter of classification, so long as it adhered to the fundamental principles underlying the doctrine of equality. Though the Legislature had wide range of flexibility in the matter of classification there must not be denial of equality in the matter of taxation, and the High Court was accordingly held to have been justified in holding that the charging section of the Act was violative of the equality clause of the Constitution.

In State of Rajasthan v. Mukachand and Ors., [1964] 6 SCR 903, the validity of Sections 2(e) and 7(2) of Jagirdar's Debt Reduction Act (Rajasthan Act 9 of 1937) was challenged. Section 2(e) defined 'debt' to mean an advance in cash or in kind including any transaction which is in substance a debt but not including an advance as aforesaid made on or after impugned part of Section 2(e).

In New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Ors. v. Municipal Corporation of the City of Ahmedabad and Ors. (supra) the question was whether under the Bombay Provincial Municipal Corporation Act (49 of 1949) levy of property tax on textile factories at flat rate per 100 sq. ft. of floor area was violative of Article 14 of the Constitution. A Constitution Bench of this Court held that the method of levy of tax on the basis of floor area was against the provision of the Act and the Rules made thereunder and that the rateable value of the property must be assessed after determining the rack rent or the annual rental value in respect of each premises which was to be computed on the basis of the annual rent for which the property might reasonably be expected to be let from year to year. The method of taxation on the basis of floor area, it had been observed, was sure to give rise to inequalities as there had been no classification of factories on any rational basis.

In State of Maharashtra & Ors. v. Madhukar Balkrishna Badiya & Ors., [19881 4 SCC 290, the validity of the Bombay Motor Vehicles Tax Act, 1958 (65 of 958) sections 3(1-C) and 9(6) (as amended by Maharashtra Acts 14 of 1987, 33 of 1987 and 9 of 1988) which levied `one time tax' at 15 times the annual rate on motor cycles and tricycles, was challenged. It was held by this Court that the Act did not suffer from any vice of discrimination on the ground that the company-owned vehicles were taxed at three times the rate payable by individuals as the system was prevailing historically. It was also held that in cases of fiscal legislation wide discretion was conferred on the legislature in the matter of classification and that the Court would ordinarily be slow in interfering with the statute on ground of discrimination if a set of facts justified the same.

In Twyford Tea Co. Ltd. & Anr. v. The State of Kerala & Anr., [1970] 3 SCR 383 the Kerala Plantation (Additional Tax) Act, 1960 (Act 17 of 1960) and the Kerala Plantation (Additional Tax) Amendment Act, 1967 (Act 19 of 1967) were challenged. The Act of 1960 levied an additional tax on plantations. Plantations meant land used for growing Cocoanut, Arecanut, Rubber, Coffee, Tea, Cardamom and Pepper. Under Section 3 of the Act, for each financial year a plantation tax

additional to the basic tax charged on land tax under the Land Tax Act, 1955 was payable at the rate mentioned in Schedule I of the Act, the rate being Rs.8 per acre. The plantations of 5 acres or below held by a person did not attract tax. For the purpose of finding out the extent of the plantation in acres held by a person a method of calculation was laid down in Schedule 11. The 1960 Act was amended by the 1967 Amendment Act. By the Amending Act the word 'additional' was removed from all places and it was declared that the tax was additional to the land revenue or any tax in lieu thereof, if any, payable in respect of such land. The unit of assessment was changed from acre to hectare and the rate of tax in Schedule I was raised to Rs.50 per hectare. The tax was payable in respect of 2 hectares of plantations or more with an exemption for the first hectare. According to the new Schedule 11 the extent of plantation for the purpose of tax in the case of Cocoanut, Arecanut, Rubber, Coffee and Pepper plantations was arrived at by dividing the total number of trees, plants or vines standing thereon by a number specified in each case. Twyford Tea Co. challenged the Act after amendment mainly on the ground of violation of Article 14 urging that there were differences of fertility and rainfall in the different areas where the plantations were situated and figures compiled by the Tea Board were placed to show the differences in yield between different estates, and Moopil Nair's case (supra) was relied on to argue that the uniform tax on unequals resulted in dis-

crimination (a) as between the tea plantations themselves and (b) as between different kinds of plantations. The legislative competency was also challenged. Hidayatullah, C.J. speaking for the Constitution Bench while dismissing the petitions held that the legislature had a wide range of selection and freedom in appraisal not only in tile objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. If production were always to be taken into account there would have to be a settlement for every year and the tax would become a kind of income-tax. The burden of proving discrimination was always heavy and heavier still was the proving in taxing statute. The burden was on the person complaining of discrimination to prove not possible inequality but hostile unequal treatment, more so when uniform taxes were levied. The State could not be asked to demonstrate equality. The petitioners in that case could not single out any particular plantations for hostile or unequal treatment.It was observed that in Moopil Nair's case the tax was held to be discriminatory because it paid no heed to quality or productive capacity of land and the tax was also held to be confiscatory since owners of unproductive land were liable to be eliminated by slow degrees unlike in Twyford case where tax was only levied in crop yielding land determining the extent of crop yielding plantation. It was observed that a uniform tax may fall more heavily on plantations than on others because the profits were widely discrepant but that by itself could not involve discrimination for then hardly any tax direct or indirect would escape the same censure.

In Elel Hotels and Investments Ltd & Ors. v. Union of India, [1989] 3 SCC 698, Venkatachaliah, J. speaking for the Constitution Bench held that classification of hotels on the basis of room charges for the purpose of levy of tax could not be said to be discriminatory as the legislature had wide discretion in taxing objects, persons and things. It was said at paragraph 20:

> "It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It

> must need to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of government. It is a recognised fiscal tool to achieve fiscal and social objectives. The differentia of classification presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotel with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant.

In Ram Prasad Narayan Sahi & Anr. v. The State of Bihar and Ors., [1953] 4 SCR 1129 wherein the Sathi Lands (Restoration) Act, 1950 declaring settlement of land with particular individual was challenged on the ground of discrimination. Mukherjee, J. speaking for the Court observed that the equal protection clause in Article 14 of the Constitution aimed at striking down hostile discrimination and applied to all persons similarly situated, but it was certainly open to the legislature to classify particular legislative objects; however, such selection or differentiation must not be arbitrary and should rest upon rational basis having regard to the object which the legislature had in view.

The intrinsic complexity of fiscal adjustments of diverse elements and wide discretion and latitude of the legislature in the matter of classification for taxation purposes was emphasised by Sabyasachi Mukharji, J. as he then was, in State of Maharashtra & Ors. v. Madhukar Balakrishna Badiya & Ors., (supra) which was a case under the Bombay Motor Vehicles Tax Act, 1958 (as amended by Maharashtra Act 14 of 1987). In para 14 of the report it was said:

> "About discrimination it is well to remember that a taxation law cannot claim immunity from the equality clause in Art. 14 of the Constitution but in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion and latitude in the matter of classification for taxation purpose is permissible."

From the propositions of law enunciated in the above cases by this Court, it is well settled that a taxation will be struck down as violative of Art. 14 if there is no reasonable basis behind the classification made by it, or, if the same class of property, similarly situated, is subjected to unequal taxation as was held in L T. 0. v. Lawrence Singh, AIR 1968 SC 658 (661): 1968 2 SCR 165. If there is no reason for the classification then also the law will be struck down. However, as was held in Kunnathat v. State of Kerala, (supra) and State of Andhra Pradesh v. Nalla Raia, AIR 1967 SC 1458: [1967] 3 SCR 28, if the taxation imposes a similar burden on every one with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground that the result of the taxation is to impose unequal burdens on different persons. It was held in Steelworth of taxation of V. State of Assam, [1962] Supp. 2 SCR 589, that in law of taxaton of income it is competent for the legislature to graduate the rate of tax according to the ability to pay. In Gattga Sagar Corpse. v. State of U. P., AIR 1980 SC 286: [1980] 1 SCR 769 also

it has been held that in the matter of taxation laws the court permits a greater latitude to the discretion of the legislature and in Khyerbari Tea Co. v. State of Assam, AIR 1964 SC 935 (94t) it has been held that in tax matters the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. In Twyford Tea Co. v. State of Kerala, (supra) it has been observed that when a statute divides the objects of tax into groups or categories, so long as there is equality and uniformity within each group, the tax cannot be attacked as violative of Art. 14, although due to fortuitous circumstances or a particular situation some included within a group may get some advantage over others, provided of course they are not sought out for special treatment. It has repeatedly been held, for example, in Khyerbari Tea Co - (supra), Gopal v. State of U. P. I AIR 1964 SC - 370 (375): (1964) 4 SCR 869 and Steelworth v. State of Assam, (supra) and Ravi Varma v. Union of India, AIR 1969 SC 1094: (1969) 3 SCR 827, that as to what articles should be taxed is a question of policy and there cannot be any complaint merely because the legislature has decided to Nakara & Ors. v. Union of tax certain articles and not others. In D.S India, [1983] 1 SCC 305, Desai, J. even expressed that too microscopic a classification may also be violative of Art. 14. It was reiterated in Bank of Baroda v.-Rednam Nagachaya Devi, [1989]4 SCC 470 that the burden is always on the person alleging the violation of Art. 14 of the Constitution of India to raise specific pleas and grounds and to prove it.

Whether a particular tax is discriminatory or not must necessarily be considered in light of the nature and incidence of that particular tax and cannot be judged by what has been held in the context of other taxes except the general propositions. The precedents relating to property taxes such as land tax, building tax, plantation tax, and even income tax or a service tax will not be of direct relevance to a luxury tax, as it is neither a property tax, nor an income tax but a tax on the provision for luxury. In case of tax on provision for luxury different aspects peculiar to the tax have to be borne in mind. The system of taxation has changed a great deal from Kautilya to kaldor and even thereafter. The history of taxation is one of evolution as is the case in all human affairs. Its progress is one of constant growth and development in keeping with the advancing economic and social conditions; and the fiscal intelligence of the State has been advancing concomitantly, subjecting by new means and methods hitherto untaxed property, income, service and provisions to taxation. With the change of scientific, commercial and economic conditions and ways of life new species of property, both tangible and intangible gaining enormous values have come into existence and new means of reaching and subjecting the same to contribute towards public finance are being developed, perfected and put into practical operation by the legisla- tures and courts of this country, of course within constitutional limitations. The ability or capacity to pay has no doubt been regarded as the test in determining the justness or equality of taxation. It is the goal towards which the system has been, as it must be, steadily working. The equality, justness and fairness of this ideal is realised when one reflects upon the vast wealth accumulated by the advantaged ones but not by people in general. The idea of distributive justice is more or less intuitive in this regard. This, however, has to harmonise well with a proportional system of taxation, that is to say, a tax at a fixed and uniform rate in proportion to the taxable event, a measure of providing air-conditioned space. In possible cases of simple space taxation or pollution taxation courts may be a little embarrassed in attempting to apply the principle of ability or capacity to pay. What, exactly is meant by equality in taxation may, therefore, have to be looked at from different angles in different kinds of taxes. This reminds us what John Stuart Mill said in Chapter V of Utilitarianism.

"Some people may think that they have rational insight into the truth of the proposition that men ought to be taxed equally, others that they have such insight into truth of the proposition that men ought to be taxed in proportion to what they earn, others that they have rational insight into the truth of the proposition that men ought to be taxed more than in proportion to what they earn. Can they be sure that in thinking this, they are not simply, being influenced by the imaginative and quasi-aesthetic appeal of making the amount of payments proportionate to the number of people, or making it proportionate to their incomes?" It may be, that this truth is simply that our imagination disposes us to think in terms of distributive justice. It is, therefore, pertinent to observe that along with the insight into a particular truth or an aesthetic value, the expediency and practicability of a particular taxation has also to be borne in mind. As was pointed out by Gustav Radbruch in his Legal Philosophy (P. 90):

"Justice demands that equals be treated equally, different ones differently according to their differences; but it leaves open the two questions, whom to consider equal or different, and how to treat them. Justice determines only the form of law. In order to get the content of the law, a second idea must be added, viz. expediency. The question of justice has been raised and answered independently of questions of expediency or suitability for any purpose, including the purpose of the state. But within the frame- work of the question of the purpose of law, the state for the first time enters the scope of our investigation. Since law, or an essential part of it, is the will of the state, and the state, or an essential part of it, is an institution of law, the questions of the purpose of law and the purpose of the state are inseparable."

What then 'equal protection of laws' means as applied to taxation? Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated, or by proceedings for the assessment and collection of taxes which follows the course usually pursued in the State. It prohibits any person or class of persons from being singled out as special subject for discrimination and hostile legislation; but is does not require equal rates of taxation on different classes of property, nor does it prohibit unequal taxation so long as the inequality is not based upon arbitrary classification.

Taxation will not be discriminatory if, within the sphere of its operation, it affects alike all persons similarly situated. It, however, does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. In the words of Cooley: It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. The rule of equality required no more than that the same means and methods be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. Nor does this requirement preclude the classification of property, trades, profession and events for taxation-subjecting one kind to one rate of taxation, and another to a different rate. "The rule of equality of taxation is not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it choses, exempt certain classes of property from any taxation at all, may impose different specific taxes upon different trades and professions." "It cannot be said that it is intended to compel the State to adopt an iron rule of equal taxation." In the words of Cooley:

"Absolute equality impossible. Inequality of taxes means substantial differences. Practical equality is constitutional equality. There is no imperative requirement that taxation shall be absolutely equal. If there were, the operations of government must come to a stop, from the absolute impossibility of fulfilling it. The most casual attention to the nature and operation of taxes will put this beyond question. No single tax can be apportioned so as to be exactly just and any combination of taxes is likely in individual cases to increase instead of diminish the inequality."

(Cooley on Taxation, 4th Edn. Vol.l.p. 558) "Perfect equality intaxation has been said time and again, to be impossible and unattainable. Approximation to it is all that can be had. Under any system of taxation, however, wisely and carefully framed, a disproportionate share of the public burdens would be thrown on certain kinds of property, because they are visible and tangible, while others are of a nature to elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principle, or operate to produce gross inequality, so that they cannot be deemed in any just sense proportional in their effect on those who are to bear the public charges that courts can interpose and arrest the course of legislation by declaring such enactments void." "Perfectly equal taxation", it has been said, "will remain an unattainable good as long as laws and government and man are imperfect." 'Perfect uniformity and perfect equality of taxation', in all the aspects in which the human mind can view it, is a baseless dream.

The equal protection of the law's provision in our Constitution prohibits a discrimination by the State against its own citizens as well as to one in their favour in imposing the luxury tax. The provision requiring luxury tax to be equal and uniform has to be interpreted in light of its characteristics. The luxury tax is 'uniform' as it is equal upon all persons belonging to the described class upon which it is imposed, namely, the owners of air-conditioned hotels and restau-

rants. The Act requires the luxury tax to be in proportion of or proportional the air-conditioned space and it requires the tax to be uniform upon the same class of owners of air- conditioned hotels and restaurants which means that all similarly situated owners shall be treated alike. It does not suffer from lack of classificaion but instead impliedly authorises it by leaving out non-air-conditioned hotels and restaurants. Equality and uniform policy means uniform and equal rates of assessment and taxation which has been followed in this tax. The concept of equality and uniformity has to adjust from time to time to new and advancing social and economic conditions and needs of public finance and fiscal policy, of course within constitutional limitations.

The submission that the incidents falls differently on different classes of hotel owner is not tenable inasmuch as the impact is the result of having different measures of air-conditioned space by different owners. This luxury tax having not been based on income earned therefrom the classification of the owners on basis of income or stars is irrelevant. The question that different proportions of air- conditioned spaces are used in different hotels and restaurants earning different proportions of income is also not relevent as the tax is not based on use of the space. The kinds of air-conditioning or the implements used are also not relevant. It is a tax on the mere provision for luxury and not on the hotel property or equipment, as we have already said. The measure or unit and the rate of taxation are uniform for all within the group subjected to tax. Further classification within the group was not considered necessary by the legislature which had wide latitude in the

matter of classification keeping in view the nature of the taxable event. We accordingly hold that the luxury tax charged under s. 4 of the Act could not be said to be discriminatory, and consequently, the impugned notices also could not be said to be illegal or void.

The result is that this appeal fails and it is dismissed with costs quantified at Rs.5,000 (Rupees Five Thousand only).

R. S. S. Appeal dismissed.