to the contrary, I find myself unable to agree with that view; and (ii) the procedure prescribed by section 88(2) of the Punjab Tenancy Act for exercise of the revisional jurisdiction of a Financial Commissioner being the same as of the High Court under section 115 of the Code of Civil Procedure, the Financial Commissioner has likewise the jurisdiction to restore for sufficient cause, a revision petition originally dismissed in default or for non-prosecution. Consequently it is held that the learned Financial Commissioner was in grave error in holding that he had no jurisdiction to set aside an order dismissing the revision petition in default. So far as the facts are concerned, he had already held in his order, dated April 9, 1963, that there was sufficient cause for non-appearance of the counsel for the petitioner on the date of hearing i.e., on February 28, 1963. I, therefore; set aside the impugned order of the Financial Commissioner, dated November 12, 1963; and restore his order, dated April 9, 1963, and direct the Financial Commissioner to hear the revision petition of the applicant recommended by the Additional Commissioner on merits after notice to all concerned and dispose it of in accordance with law. In the circumstances of the case, I make no order as to costs in this Court.

Before parting with this case, I would like to avail of this opportunity to recommend to my Lord the Chief Justice and the learned Puisne Judges of this Court that in order to avoid any further controversy on the point in question, we may also consider the advisability of amending the relevant rules in the 1st Schedule to the Code of Civil Procedure as was done by the Madras High Court in 1946.

R. N. M.

FULL BENCH

Before Shamsher Bahadur, Gurdev Singh and R. S. Narula, JJ.

KAMTA PARSAD AGGARWAL,—*Petitioner*

versus

THE EXECUTIVE OFFICER, PANCHAYAT SAMITI, BALLABGARH AND ANOTHER,—*Respondents*

Civil Writ No. 354 of 1967

Civil Writ No. 355 of 1967

May 17, 1968

Constitution of India (1950)—*Article* 276—*Punjab Professions, Trades, Callings and Employments Taxation Act* (*VII of* 1956)—*Section* 3—*Punjab Panchayat*

Samitis and Zila Parishads Act (III of 1961)—S. 64—Taxes on Professions, trades, callings and employments—Levy of—Aggregate amount of such taxes——Whether limited to Rs. 250 per annum—State, Municipality or other local authority—Each one of them—Whether can impose such tax to the extent of Rs. 250—Article 276(2)—Word "or" whether used as "and".

Held, that each of the authorities mentioned in Article 276 of Constitution of India can levy the tax up to maximum of Rs. 250 per annum. The aggregate limit of Rs. 250 fixed in the Article relates to the taxes on professions, trades, callings and employments which can *each* be imposed by the State or local authority. This aggregate limit is for the State Legislature and for the local authority separately that is each one of them can tax up to the maximum limit of Rs. 250 per annum and not jointly.

Held, that the word "or" can be used in a conjunctive sense as a substitute for 'and' if the compelling context so requires to carry out legislative intent which is otherwise obvious. There are, however, indications in the provisions of Article 276 of the Constitution itself to suggest that the word "or" was used deliberately in a disjunctive sense and consequently the limit of Rs. 250 relates to the taxing power of each of the authorities empowered to do so. The plain grammatical meaning in such a situation is preferred, as in the case of fiscal and taxing statutes the matter of consideration of fairness and equity is hardly of any consequence. Nor is it necessary to read "and" for "or" in the paramount interests of harmonious construction and the effectuation of legislative intent.

Case referred by the Hon'ble Mr. Justice Tek Chand on 25th August, 1967 to a Larger Bench for decision of an important question of law involved in the case and the case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice R. S. Narula on 17th May, 1968.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Prohibition or any other appropriate writ, order or direction be issued prohibiting the respondent No. 1 from levying, imposing and realizing the sum of Rs. 200 as profession tax under demand Notice, dated 20th January, 1967, for the assessment year 1966-67.

Brij Bans Kishore and S. K. Aggarwal, Advocates, for the Petitioner.

Harbhagwan Singh, Birinder Singh, and R. L. Sharma, Advocates and Anand Swaroop, Advocate-General (Haryana) *as amicus curiae with* J. C. Verma, Advocate, for the Respondents.

ORDER OF THE FULL BENCH

SHAMSHER BAHADUR, J.—Whether the aggregate amount of taxes on professions, trades, callings and employments in respect of one person to be levied by the State or a Municipality or other local authority should be limited to a sum of Rs. 250 per annum or that a sum up to Rs. 250 may be levied by each one of these autohrities is the question that has to be resolved in this reference to a Full Bench ? Tek Chand, J., before whom these petitions, *Goodyear India Limited* v. *The Executive Officer, Panchayat Samiti, Ballabgarh* (Civil Writ No. 354 of 1967) *and Kamta Prasad Agarwal* v. *The Executive Officer, Panchayat Samiti, Ballabgarh;* (Civil Writ No. 355 of 1967), came for disposal being of the view that the attention of the Division Bench of Chief Justice Falshaw and Harbans Singh, J., in *Aruna Rani* v. *District Board, Amritsar and another* (1), where it was held that "a tax up to Rs. 250 can be imposed by each one of the authorities mentioned in Article 276(2) of the Constitution" not having been brought to an earlier decision of Mahajan, J., in *Lachhman Das Makhan Lal* v. *State of Punjab* (2), where it was observed by way of an *obiter* that the aggregate of profession tax cannot exceed the sum of 250 per annum, a re-consideration by a Full Bench is necessary.

Before adverting to the facts giving rise to this question of law, it may be well to reproduce the provisions of Article 276 of the Constitution which have been the subject-matter of controversy :—

> "276(1). 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 grounds 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

(1) I.L.R. (1964) 1 Punj. 787=A.I.R. 1964 Punj. 383.
(2) A.I.R. 1960 Punj. 394.

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, muncipalities, boards or authorities.

(3) . . . . ".

It may be observed that "taxes on professions, trades, callings and employments" are the subject-matter of Entry No. 60 in the State List (List II) of Seventh Schedule to the Constitution.

The Goodyear India Limited, which is the petitioner in Civil Writ No. 354 of 1967, and Kamta Prasad, Manager, Labour Department, of this Company; in Civil Writ No. 355 of 1967 have challenged the imposition by the respondent Panchayat Samiti, Ballabgarh, of what may briefly be called 'professional tax' up to maximum limit of Rs. 200 per annum on a graded scale when a similar tax subject to a maximum of Rs. 250 per annum, also on a graded scale, has already been levied and is being realized by the State of Haryana, the second respondent in these petitions. It may be mentioned in passing that though the State of Haryana has not chosen to be represented before us, we have heard the arguments of its Advocate-General Mr. Anand Swaroop, who has assisted this Court as *amicus curiae*.

The Punjab Professions, Trades, Callings and Employments Taxation Act, 1956 (hereinafter called the Act) was enacted on 3rd May, 1956 and had been in force till the reorganisation of the State of Punjab which took place on 1st of November, 1966. Under section 3 of the Act :—

"Every person who carried on trade, either by himself or by an agent or representative, or who follows a profession or

calling, or who is in employment, either wholly or in part within the State of Punjab, shall be liable to pay for each financial year or a part thereof a tax in respect of such profession, trade, calling or employment".

The tax was to be levied at rates specified in the Schedule annexed to the Act. Broadly speaking, incomes below Rs. 6,000 were exempted from this tax. While on the one hand, income between Rs. 6,000 and Rs. 8,500 was subject to a tax of Rs. 120, the maximum of Rs. 250 was levied on income exceeding Rs. 25,000. A person under clause (d) of section 2 of the Act includes "Hindu undivided family or an incorporated company". The petitioner in Civil Writ No. 354 of 1967 became liable as a person and had been paying the professional tax of Rs. 250 per annum under this Act. The petitioner in Civil Writ No. 355 of 1967 was likewise paying professional tax of the State Government and it was realised by the Treasury Officer, Gurgaon.

Under section 5 of the Punjab Temporary Taxation Act, 1962 (Punjab Act No. 19 of 1962), the Schedule in the Act was altered to bring the scale on one end with an income between Rs. 1,800 to Rs. 3,000 leviable to a tax of Rs. 28, and on the other an income exceeding Rs. 11,500 per annum subject to a tax of Rs. 250 per annum. It may be mentioned that by Punjab Act No. 6 of 1967, the Act has been repealed and there is now no professional tax so far as the reorganised State of Punjab is concerned. The provisions of the Act, however, continue to be applicable to the State of Haryana and also to the Union Territory of Chandigarh under the relevant provisions of law. The Panchayat Samiti, Ballabgarh, the first respondent, notified to the petitioner on 19th of September, 1962; that it intended to levy professional tax at the maximum rate of Rs. 200 per annum according to the schedule which is Annexure 'O'. Now, this schedule has come into existence in consequence of a notification of the Punjab Government of 16th June, 1956, which is Annexure 'M'. It was mentioned in this notification that the District Board, Gurgaon, with the sanction of the Government of Punjab, had imposed a tax on professions, trade, callings and employments, the only exemption being in the case of an income not exceeding Rs. 400 per annum. The District Boards in the State of Punjab were abolished in consequence of the Punjab Panchayat Samitis and Zila

Parishads Act, 1961, and under the saving provision, which is section 64 of this Act :—

> "A Panchayat Samiti shall be deemed to have imposed any tax at the rate at which, immediately before the commencement of this Act, any tax was lawfully levied by the District Board of the district in which the Panchayat Samiti is situate, until a provision to the contrary is made by the Panchayat Samiti with the previous sanction of the Government."

The schedule of rates which has been adopted by the Panchayat Samiti as it prevails today is Annexure 'O'. The levy of professional tax is graded : on the one end there are incomes between Rs. 400 and Rs. 500 carrying a tax of Rs. 7 while the highest grade is the income exceeding Rs. 10,000 on which a tax of Rs. 200 per annum is levied. It is the levy of this additional professional tax which the petitioners complain of.

It has not been seriously disputed that the first respondent is the successor-in-interest of the District Board and the levy of professional tax if justified in the case of the District Board, would also be permissible for the Panchayat Samiti, Ballabgarh. The demand has been made by the first respondent for the professional tax accordingg to the amended schedule, Annexure 'O'.

It may be mentioned at this stage that the limitation of the levy of tax on professions, trades, callings and employments was similarly worded in section 142-A of the Government of India Act, 1935, as in Article 276 of the Constitution save with this difference that instead of Rs. 250 per annum the quantum limit in the Act of 1935 was Rs. 50 per annum. The language of section 142-A is otherwise almost identical with that of Article 276 of the Constitution. The three sub-sections of section 142-A along with the proviso to subsection (2) are the same as clauses (1) (2) and (3) of Article 276.

In his fair and able argument Mr. Brij Bans Kishore, the learned counsel for the petitioners, submits that the tax on profession, trade, calling or employment can be levied only by one authority mentioned in Article 276 and when the State Government has already exercised its power of imposition, the Municipality; the Zila Parishad

or the Panchayat Samiti are not left with any constitutional authority to impose a similar tax. Clause (1) of Article 276 has declared that such a tax cannot be invalid on the ground that it relates to a tax on income. The schedules, both of the State and the first respondent; have imposed graded professional tax on different ranges of income and there is nothing in the language of the three clauses of Article 276 to suggest that the tax can be imposed *either* by the State or the Municipality or any other local authority. That the same tax can be imposed by different bodies if permissible by statute admits of no doubt. The power is derived from entry 60 where it is mentioned that the subject-matter of tax on professions, trades, calling and employments is a matter of State legislation and Article 276 subject of course to the overriding powers of the Parliament, also gives a similar charter or authority to the States, Municipalities and other local authorities. As observed by a Division Bench of this Court of Khosla, C.J.; and Mahajan, J.; in *Walaiti Ram* v. *Rupar Municipality* (3):—

> "The items in the Legislative List have to be given most liberal interpretation and have to be construed in their widest amplitude and the rule of interpretation that the words should be read in their ordinary, natural and grammatical meaning has no applicability to constitutional enactment conferring legislative powers."

The learned counsel for the petitioners has argued that the taxation both by the State and any of the local authorities would amount to double taxation. There is nothing in any statute or constitutional provision to inhibit double taxation. The Division Bench of Mehar Singh, J. (as the Chief Justice then was) and Grover, J. (now Mr. Justice Grover of the Supreme Court) in *Ram Partap* v. *The State of Punjab and others* (4), obesrved at page 203 that :—

> "There is no limitation that tax cannot be charged twice on the same property. In fact and in substance it is one tax

(3) I.L.R. (1961) 1 Punj. 80=A.I.R. 1960 Punj. 669.

(4) I.L.R. (1963) 1 Punj. 477=1963 P.L.R. 197.

on buildings and lands which is divided between the local authority and the State Government, though this is brought about not by the statute but by two separate statutes."

The principle which was enunciated by the Division Bench related to the imposition of the property tax and there is no reason to exclude its applicability to professional tax. In a Bench decision of the Bombay High Court of Bavdekar and Chainani, JJ., in *Cantonment Board, Poona* v. *Western India Theatres Ltd.* (5), where the entertainment tax has been levied by two different authorities, it was observed that :—

"There is nothing in the Constitution which prevents double taxation being levied. Instances are not wanting in this country in which taxes are levied twice upon the same thing, once for the benefit of the State Government and in the second instance for the benefit of the Local Self Government bodies, for example, the District Board or the Municipality."

The same principle was enunciated by the Court of Andhra Pradesh by a Division Bench of Satyanaryana Raju J. (later a Judge of the Supreme Court) and Base Reddy, J., in *Garimell Satyanarayna* v. *East Godavari Coconut and Tobacco Market Committee* (6). Raju, J., speaking for the Court, observed at page 404 that :—

"It is necessary to refer to another contention raised by the petitioners, which was not ultimately persisted in and that is that the levy amounts to a double taxation and is therefore, prohibited under Article 265 of the Constitution. A similar contention was raised in *Cantonment Board, Poona* v. *Western India Treatres Ltd.*, (5), where it has been held that there is nothing in the Constitution which prevents double taxation being levied and that instances are not wanting in this country in which taxes are levied twice upon the same thing, once for the benefit of the

(5) A.I.R. 1954 Bom. 261.
(6) A.I.R.1959 A.P. 398.

State Government and in the second instance for the benefit of the Local Self-Government bodies, for example, the District Local Board or the Municipality. . ."

The second argument of Mr. Brij Bans Kishore relates to the construction of clause (2) of Article 276. It is submitted by him in the first instance that the word 'or' occurring twice should be read as 'and' in a conjunctive sense and so read it would mean that the totality of the taxes imposed on professions, trades, callings and employments by the State, the Municipality or any other local authority should not exceed the sum of Rs. 250 per annum. In support of this submission it is submitted that the words "total" and "taxes" imply the element of plurality and being relatable to the limit of Rs. 250 must encompass all the levying authorities mentioned therein. It is undeniable that the word "or" can sometime be read as "and" and *vice versa* if it is found necessary to do so to effectuate the legislative intent. Can it be said that the Legislature intended to put a ceiling on the profession tax at Rs. 250 per annum. As far as the word "taxes" used in plural, it is easily explainable. The State Legislature has the power to impose taxes which are lumped in one head on "professions, trades, callings and employments". It may be conceiable that two or more of these subjects may be chosen as the object of taxation. For instance, a doctor may be carrying on his professional practice and may also be in receipt of salary as an employee of some organisation. A person may be trading and at the same time be a part-time employee somewhere. If levies are to be imposed on 'professions, trades, callings and employment" the appropriate and apt word for the occasion would be "taxes". It may be that the object contended for on behalf of the respondent, could also be achieved by the omission of the word "total" from the statute but the word by itself does not change the essential content and meaning of clause (2) of Article 276. It is very strongly contended by Mr. Brij Bans Kishore that the deliberate use of the word "total" must of necessity mean that the limit of Rs. 250 is relatable to the taxes imposed by the State and the local authorities, but the context does not justify the conclusion.

In Crawford on Statutory construction (1940 edition) it is stated at page 322 that:—

"In ordinary use the word 'or' is a disjunctive that marks an alternative which generally corresponds to the word

'either'. In face of this meaning, however, the word 'or' and the word 'and' are often used interchangeably. As a result of this common and careless use of the two words in legislation, there are occasions when the court, through construction, may change one to the other. This cannot be done if the statute's meaning is clear, or if the alteration operates to change the meaning of the law. It is proper only in order to more accurately express, or to carry out the obvious intent of the legislature, when the statute itself furnishes cogent proof of the error of the legislature, and especially where it will avoid absurd or impossible consequences, or operate to harmonize the statute and give effect to all of its provisions."

Sutherland Statutory Construction (3rd edition), Volume 2, also refers to the subject of conjunctive and disjunctive words at page 450 :—

"Where two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled in order to comply with the statute, the conjunctive 'and' should be used. Where a failure to comply with any requirement imposes liability, the disjunctive 'or' should be used. There has been, however, so great laxity in the use of these terms that courts have generally said that the words are interchangeable and that one may be substituted for the other, if to do so is consistent with the legislative intent."

In the last analysis, therefore, the word 'or' can be used in a conjunctive sense as a substitute for 'and' if the compelling context so requires to carry out legislative intent which is otherwise obvious. There are two indications in the provisions of Article 276 itself to suggest that the word 'or' was used deliberately in a disjunctive sense and consequently the limit of Rs. 250/- relates to the taxing power of each of the authorities empowered to do so. In the proviso to clause (2) of Article 276 it is mentioned that if before the commencement of the Constitution any State or any Municipality, Board or authority had imposed a tax exceeding the limit of Rs. 250/- such tax may continue. Again, when the proviso speaks of "any State or any such municipality" there is an obvious inference that both could have taxed separately to the limit imposed by statute.

So far as the language of clause (2) of Article 276 is concerned, the words "in respect of any one person to the State or to any one municipality, district board, local board or other local authority" are employed. Why should the words "any one" appear in juxtaposition with "municipality, district board, local board or other local authority" ? It is to be emphasised that the words "in respect of any one person to the State" have already been used before "any one municipality, district board, local board or other local authority". I think the plain grammatical meaning in such a situation should be preferred as in the case of fiscal and taxing statutes the matter of consideration of fairness and equity is hardly of any consequence. Nor is it necessary to read "and" for "or" in the paramount interests of harmonious construction and the effectuation of legislative intent.

There is one further difficulty in accepting the interpretation contended for by Mr. Brij Bans Kishore and may possibly work into an injustice. As the limit of Rs. 250 has been reached in the case of incomes above Rs. 11,500 with regard to imposition of professional tax by the State it would mean that on persons with those incomes, no more of this tax can be imposed by a municipality or other local authority. It, however, has to be admitted and has been conceded by the learned counsel, that if that limit is not reached in the case of other incomes, the professional tax being graded, the municipality or the other local authority can be permitted to impose such a tax to the extent that it is less than Rs. 250 per annum. By way of illustration, if a person is paying professional tax of Rs. 150 to the State, the local authority can impose on him a similar tax up to the balance of Rs. 100 which is the amount short of the permissible aggregate of Rs. 250 per annum. Such a course may be open to objection on more than one ground. It may be said that while persons with lower income are taxed those with higher incomes are permitted to escape. The local authorities would be obliged to have their requirements made up by taxing persons of lower incomes only.

It is further to be borne in mind that besides the State there is only one possible local authority which can levy the professional tax. If an area falls in a Municipality there can be no Zila Parishad or Panchayat Samiti and consequently it would only be the Municipality which besides the State can levy this tax. If, on the other hand, the area falls under a Zila Parishad or a Panchayat Samiti,

then the Municipality does not come into picture and consequently one of these two bodies besides the State will be able to levy the tax. In the result, only two bodies, including the State, can levy the professional tax up to a maximum of Rs. 250 per annum.

Looked from all possible perspectives, we, therefore, consider that each of the authorities mentioned in Article 276 can levy the tax up to maximum of Rs. 250 per year. This conclusion having been reached independently, we may now examine the Bench decision of Chief Justice Falshaw and Harbans Singh, J., in *Aruna Rani wife of Nand Kishore* v. *District Board, Amritsar* (1). In that case, Ashok Textile and Twisting Mills of Verka in the district of Amritsar came within the jurisdiction of the District Board of Amritsar which subsequently under the Punjab Panchayat Samitis and Zila Parishads Act, 1961, became the Zila Parishad. The District Board had made a demand of Rs. 200 from the assessee as professional tax. This being in addition to the State tax an objection was raised and this was repelled by the Division Bench. In speaking for the Court, Chief Justice Falshaw observed at page 384 that :—

> "Neither party was able to cite any authority in which Article 276(2) of the Constitution has been interpreted in a matter of this kind.....and the question is whether the State and the other bodies can in appropriate cases each impose a tax of up to Rs. 250 per annum or whether the total sum payable by any individual on account of taxes of this kind levied by the State and local bodies cannot exceed Rs. 250. In my opinion there can be little doubt from the wording that the first of these interpretations is correct. It seems to me that the words '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' must mean that a tax of up to Rs. 250 can be imposed by any one of the authorities mentioned and if the intention had been on the lines supported by the learned counsel for the petitioner the wording would have been something like this, 'the total amount payable in respect of any one person by way of tax on professions, trades, callings or employments shall not exceed Rs. 250 per annum whether imposed by the State, a municipality, district board, local board or other local authority'."

The Chief Justice then went on to consider the question of hardship and in his opinion the provision was "hardly likely to be

applied in more than one locality to a professional man or an employee, and in case of businesses carried on by one person in different localities it is to be presumed that where the tax is imposed by a local body it will be on the income of the person earned in the area of the particular local body imposing the tax. Such being the case there will not be many persons who will find themselves liable for the maximum in each place where they are taxed. "As observed before, we have to go strictly by the language employed in the statute and the question of fairness or otherwise is hardly of much significance. The learned counsel for the petitioners, as also Tek Chand, J., considered that the Division Bench in disposing of *Aruna Rani's case*, before whom admittedly no case was cited, could not have taken account of the other view which was taken by Mahajan, J., in *Lachhman Das Makhan Lal* v. *State of Punjab* (2). Mahajan, J., was disposing of a writ petition which was directed against a resolution passed by a Gram Panchayat imposing a tax on commission agents at 5 per cent on their income derived from their business as commission agents. The Panchayat had not fixed the maximum limit up to which the tax had to be levied, and on basis of the percentage fixed the amount of tax may be far in excess of Rs. 250, the maximum limit fixed by Article 276. In this situation the learned Judge allowed the petition and in doing so, observed in a last paragraph of the judgment by way of an *obiter* thus :—

> "It will be open to the Panchayat to pass a proper resolution keeping in view the provisions of Article 276 of the Constitution, and other State Legislative enactments whereunder profession tax is imposed within the State inasmuch as the aggregate of profession tax cannot exceed the sum of Rs. 250 per annum."

Now, the learned Judge took a *prima facie* view presumably as a first impression, and I must confess speaking for myself that I also thought similarly at the start of arguments and before a close and analytical examination of the problem that the aggregate of professional tax cannot exceed the sum of Rs. 250 per annum. Concedely, the observation was made by Mahajan, J., as an *obiter* and unsupported as it is by any reasoning this cannot be said to constitute a view which could be said to have been ignored by the Division Bench in *Aruna Rani's case*. It is possible that on reflection and further

scrutiny the learned Judge himself may have taken a different view as we have in these cases.

We would, therefore, hold in agreement with the Division Bench in *Aruna Rani* v. *District Board, Amritsar* (1), that the aggregate limit of Rs. 250 per annum fixed in Article 276 relates to the taxes on professions, trades, callings and employments which can *each* be imposed by the State or the other local authority. Both these petitions will stand dismissed but as a question of law of some complexity had been canvassed we make no order as to costs.

NARULA, J.—All the relevant facts have been set out in the judgment prepared by my Lord Shamsher Bahadur, J., and none of them need be reiterated. Both the taxes in question, i.e., the one imposed by the State Legislature under section 3 of the Punjab Professions, Trades, Callings and Employments Taxation Act 7 of 1956 as well as the other which was originally imposed by the District Board, Gurgaon, under section 31 of the Punjab District Boards Act, 1883, and then continued by the Panchayat Samiti, Ballabgarh (respondent No. 2), under section 64 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, are admittedly covered and authorised by entry No. 60 of List II of Seventh Schedule of the Constitution. Mr. Brij Bans Kishore conceded that in view of the law laid down in *Hirabhai Ashabhai Patel and others* v. *State of Bombay and others* (7), *Walaiti Ram Nathu Ram* v. *Municipal Committee, Rupar* (3), and *Kisan Supdu Ingale* v. *Bhusawal Borough Municipality, Bhusawal and another* (8), it is undoubtedly permissible to the State Legislature not only to legislate itself but also to confer powers upon a local authority with regard to any subject of local Government and that the power to impose a tax on professions, trades, callings or employments is for the purpose of local government. On the question of double taxation on the same person or the same property being permissible within the relevant statutory and constitutional limits, I have nothing to add to what has fallen from my learned brother.

(7) A.I.R. 1955 Bom. 185.
(8) A.I.R. 1966 Bom. 15.

The learned counsel for the petitioners argued that as soon as the State Legislature had passed Punjab Act 7 of 1956 and particularly after it came into force on and with effect from October 20, 1956, the power of the State Legislature to delegate its authority to a Local Body or a Zila Parishad to impose the tax stood exhausted because the State had under the Schedule to the Act imposed the tax on the highest income group to the maximum permissible limit, i.e., a tax of Rs. 250 per annum. In substance, the argument was that the whole of the field of legislation permitted by Entry No. 60 read with clause (2) of Article 276 was occupied by the Punjab Act 7 of 1956 and no part of the field was left uncovered so as to permit a local authority to impose the same tax. The Punjab District Boards Act was passed in 1883. As already stated the tax by the local authority was imposed by the District Board, Gurgaon, long before 1956. Though originally the maximum limit of the tax imposed by the District Board is alleged to have been Rs. 50 only; and that must be so on account of the limit imposed under section 142-A of the Government of India Act, 1935, the learned counsel for the petitioners was not able to deny that the maximum limit of the said tax had been raised by the District Board some time after the 26th day of January, 1950, and before the 20th of October, 1950 to Rs. 250 as permitted by the Constitution. The fact, therefore, remains that the ceiling for taxation under Entry No. 60 read with Article 276(2) had been reached in respect of areas within the jurisdiction of District Boards before Punjab Act 7 of 1966 was passed. It is significant that the petitioner has not impugned the validity of the said Punjab Act in either of the writ petitions; nor has he questioned the constitutionality of the said Act at the hearing before us. The second respondent has merely continued the tax originally imposed by the District Board by virtue of powers vested in it under section 64 of the Samitis Act. Though the State Legislature itself as well as a local authority to which the relevant powers of the State Legislature have been delegated can impose the relevant tax, the objection of the petitioners is that once the tax is imposed to the maximum permissible limit by either one of them, the power of the other to impose any such further tax transgresses the constitutional limit imposed by Article 276(2). Since it is the common case of all the parties that the tax imposed by the State as well as the tax imposed by the District Board and continued by the Panchayat Samiti does not individually exceed Rs. 250 it would be wholly unnecessary to consider this aspect of the case if we come

to the conclusion that the limit of Rs. 250 per annum on the quantum of the tax in question is not for the State and the local authority combined but for each of the two sets of taxing authorities. I do not, therefore, proceed to examine any further this argument of Mr. Brij Bans Kishore because I am in full agreement with my learned brother that the limit of Rs. 250 per annum imposed by Clause (2) of Article 276 is for the State Legislature and for the local authority separately, i.e., each one of them can tax up to the maximum limit of Rs. 250 per annum and not jointly.

On the main question about the ceiling of the tax in dispute I agree entirely with the meaning assigned to the three crucial words, i.e., "total", "or" and "taxes"—in the judgment prepared by my esteemed brother and with the reasoning adopted by my Lord for construing the said expression in the manner his Lordship has done. In order to put the same thing in another way I may take the liberty of rewriting Article 276(2) of the Constitution almost upside down.

"In respect of any one person the total amount payable to—

(i) The State

or

(ii) Any one local authority (which may be a Municipality, a District Board or other local authority);

by way of taxes on professions, trades, callings and employments shall not exceed Rs. 250."

Rewriting of the relevant clause of Article 276 in the above manner clearly demonstrates that the limit of Rs. 250 has been imposed separately for the State as well as the local authority and not conjunctively. If the word "total" was not prefixed to the expression "amount payable to the State or any one local authority" it was possible to construe that the limit of Rs. 250 was for each one of the taxes enumerated in the clause, i.e., for a tax on profession, a tax on trade, a tax on calling or a tax on employment. Similarly if for the word "taxes" the word used by the Constituent Assembly had been "tax" it might not have been possible to prevent the same mischief which was obviously never intended. I am, therefore, inclined to think that the word "total" and the choice to express the relevant tax in the plural is deliberate and meaningful and is wholly consistent with the interpretation sought to be placed on Clause (2) of Article 276 on behalf of the Panchayat Samiti and by the amicus

curiae. My learned brother has also given an illustration in the judgment prepared by him which supports this view. The relevant passage in the judgment of the Andhra Pradesh High Court in *Garimell Satyanarayana and Appana Vernkataraju firm of Amjip Ambajipeta and others* v. *East Godavari Coconut and Tobacco Market Committee, Rajamundry* (6) (paragraph 40 on page 404 of the A.I.R. report) which has also been referred to by Shamsher Bahadur, J., is significantly helpful in arriving at the same conclusion.

Being fully conscious of the fact that the legislative intent is not relevant in considering a plain statutory provision and the same must be interpreted according to its plain language even if it is not in consonance with the possible intention of the legislature and also being aware of the fact that legislative debates cannot be referred to for construing a statutory provision I may take notice at this stage briefly of the historical background of the relevant provision in order to appreciate the circumstances in which the clause in question was enacted. My learned brother has already referred to section 142-A inserted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6, Chapter 5) in the Government of India Act, 1935. Though in the purview of sub-section (2) of Section 142-A the imposition of the relevant tax exceeding Rs. 50 per annum after the 31st day of March, 1939, was absolutely prohibited, the proviso to that sub-section continued the right of Provinces to impose a tax on professions, etc., which had been levied at higher rate than Rs. 50 per annum prior to 31st March, 1939. In such cases exemption was granted from the operation of the limit of Rs. 50 by the proviso to sub-section (2) of section 142-A. Though in most of the provinces, the taxes that had been imposed under the relevant entry were up to Rs. 50 in respect of any one person, the maximum rate in Madras Presidency was as high as Rs. 1,000 per annum in the city of Madras and Rs. 550 per annum in the districts outside the city. There was a wide-spread demand in the Madras Presidency that the maximum limit of the tax in question in that province should also be brought down to Rs. 50 per annum. This demand was met by the passing of the Professions Tax Limitation Act XX of 1941 by the Federal Legislature on 26th November, 1941. The Act provided that whereas it was expedient that provision should be made whereby the total amount payable in respect of any one person by way of relevant tax shall not exceed Rs. 50 per annum, it was enacted that notwithstanding the provisions of

any law for the time being in force any taxes payable in respect of any one person to a province or to any one local authority in any province by way of the relevant tax shall from and after the commencement of the 1942 Act cease to be levied to the extent to which such taxes exceed Rs. 50 per annum. In the Draft Constitution prepared by the Drafting Committee of the Constituent Assembly of India Article 256 which corresponded to what is now Article 276, the limit of Rs. 50 was raised to Rs. 250 per annum. The discussion of the relevant Article took place in the Constituent Assembly of India on October 9, 1949, Various amendments to the Article were moved. Professor Shibben Lal Saksena suggested that the limit of Rs. 250 should not be laid down in the Constitution and that if a limit must be laid down, so far as the local bodies were concerned the limit should be raised to one per cent of the annual income or Rs. 1,000 per annum. Out of various members of the Assembly which spoke on the proposed amendment Shri Prabhudayal Himatsingka (page 298 of Volume IX, 1949 The Constitutent Assembly Debates) stated *inter alia* as follows :—

> "(after referring to the relevant provisions of the Government of India Act)
>
> The result is that a person who has to pay Rs. 30 as income-tax has to pay a like sum to the provincial government. On the basis of this article he can be made to pay Rs. 250 to the municipality and Rs. 250 to the provincial government apart from what he has to pay to the Centre in the shape of income-tax."

In the various speeches made thereafter including that of the Hon'ble B. R. Ambedkar, it was not suggested that the impression of Mr. Himatsingka was in any manner erroneous. Dr. Ambedkar in his speech (at page 301) observed in this behalf as below:—

> "This article, which I am proposing, is really an exception to the general rule that there ought to be no provision in a Constitution dealing with the financial resources of what are called local authorities which are subordinate to the State. But having regard to the fact that there are at present certain local authorities and their administration is dependent upon certain taxes which they have been levying and although those taxes have been contrary to the spirit of the

> Income-tax law, the Drafting Committee, having taken into consideration the existing circumstances, is prepared to allow the existing state of affairs to continue. In fact exception was taken to the limit fixed by the Expert Committee which was Rs. 250. The proposal was that it ought to be brought down to Rs. 150. The Drafting Committee on reconsideration decided that that need not be done and under the present state of affairs may be continued up to the limit and within the scope that it occupies today. I therefore say that this is a pure exception, and on principle I am definitely opposed to it and I am, therefore, not prepared to accept any amendment that may have been moved by any honourable Friend."

To complete the history, it may be mentioned that the amendment was negatived and the ceiling of Rs. 250 for the State as well as the local authorities was maintained while passing clause 256 of the Draft Constitution into Article 276 of the Constitution. I have, therefore, no hesitation in agreeing with my learned brother and holding that it is not the aggregate liability of a person to pay the tax in question to the State and the local authority taken together which has been fixed at Rs. 250 by Article 276(2) of the Constitution but that the limit is disjunctive, i.e., the State on the one hand as well as the relevant local authority on the other may impose a tax under Entry No. 60 of List II up to a maximum of Rs. 250 in respect of any one person.

I also agree that in view of the question of interpretation of an article of the Constitution being involved in these cases, which question is *res integra* we should leave the parties to bear their costs as incurred by them.

GURDEV SINGH, J.—I agree with my learned brother Shamsher Bahadur, J.

K.S.K.