(1996) 12 GAU CK 0014

Gauhati High Court

Case No: Civil Rule No''s. 1977, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2073, 2077, 2078, 2079, 2080, 2152, 2153, 2154, 2155, 2156, 2157, 2402, 2403, 2404, 2445, 2447, 2448, 2450, 2451, 2452, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 253

Makum Tea Co. (India) Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: Dec. 3, 1996

Acts Referred:

- Assam General Sales Tax Act, 1993 - Section 13, 13(1), 17, 27, 27(1)
- Assam General Sales Tax Rules, 1993 - Rule 35, 35(1)
- Companies Act, 1956 - Section 2(1), 2(26), 2(37)
- Constitution of India, 1950 - Article 14, 19, 19(1), 19(2), 19(3)

Citation: (1997) 1 GLR 138

Hon'ble Judges: D.N. Baruah, J

Bench: Single Bench

Advocate: P.K. Goswami and S.N. Sarmah, in C.R. Nos. 1979 and 2448 of 1994, P.K. Goswami, S.N. Sarma and U. Das, in C.R. Nos. 2048, 2050, 2051, 2077, 2078, 2092, 2153, 2154, 2402, 2442, 2447, 2450, 2451, 2452, 2526, 2528, 2529, 2531, 2532, 2533, 2534, 2560, 2562, 2563, 2566, 2567, 2569, 2570, 2867, 2868, 2971, 2973, 2974 and 3107 of 1994, P.K. Goswami, S.N. Sarma and S.S. Goswami, in C.R. Nos. 2043, 2044, 2045, 2046, 2047, 2049, 2077, 2080, 2156, 2157, 2403, 2524, 2527, 2530, 2535, 2561, 2565 and 2568 of 1994, P.K. Goswami, S.N. Sarma, S. Das and S.S. Goswami, in C.R. Nos. 2152, 2155, 2404, 2525 and 2564 of 1994, G.N. Sahewalla, A.K. Goswami, P. Bora and B.L. Agarwal, in C.R. Nos. 3047 and 3048, S.N. Sarma and H. Sarma, in C. R. No. 1311 of 1955, S.N. Sarma, K. Baruah and D.S. Bhattacharjee, in C.R. No. 1663 of 1957, S.N. Sarma, in C.R. No. 2971 and 2972, S.N. Sarma and S. Kakati, in C.R. Nos. 3466, 3467, 3468 and 3474, A.K. Saraf, K.K. Gupta, R.K. Agarwala and A. Das, in C.R. No. 853 of 1996, for the Appellant; P.G. Baruah, General for Assam and R. Borbora, for the Respondent

Final Decision: Allowed

Judgement

D.N. Baruah, J.

The above Civil Rules involve common questions of law and similar facts, therefore, I propose to dispose of all the Civil Rules by a common judgment.

2. Petitioners in all the above Civil Rules are "Public Companies" within the meaning of Section 2(37) of the Companies Act, 1956. These companies are incorporated under the said Act with their registered offices in Assam and other places. These companies own tea gardens in various places of Assam. They are engaged in cultivation and production of tea. For running and managing the lea gardens belonging to the Petitioners they are required to make purchases of various articles from the market. Most of the articles are taxable goods which comes under "the Assam General Sales Tax Act, 1993", for short the Act.

3. u/s 27 of the Act, every person responsible for making any payment or authorised as mentioned in the said section has to deduct tax at source at the rate and in the manner prescribed under the said Act. On the strength of Section 27 the supplier on behalf of the buyer shall have the right to deduct tax at source. Section 27 is quoted below:

27. (1) Not withstanding anything contained in any other provisions of this Act:

(a) every person (not being an individual or a Hindu undivided family) responsible for making any payment or discharging any liability on account of any amount payable for the transfer of property in goods (whether as goods or in some other form) involved in a works contract specified in Schedule VI or for the transfer of the right to use any goods specified in Schedule VII for any purpose, or

(b) every person responsible for paying sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the Government or to a company, corporation, board, authority, undertaking or any other body by whatever name called, owned financed or control led wholly or substantially by the Government, or a public company shall, at the time of credit amount in cash, by cheque, by adjustment or in any other manner whatsoever, deduct tax therefrom in the prescribed manner at the rate specified in the Schedules of the Act;

Provided that no deduction shall be made under this sub-section where the amount paid or credited by such person in any financial year does not exceed the prescribed amount.

(2) Any tax deducted under Sub-section (1) shall be paid to the account of the State Government in such manner and within such lime as may be prescribed.

(3) The person making any deduction of tax under Sub-section (1) and paying it to the account of the state Government shall issue a certificate of tax deduction to the payee in such manner in such form and within such time as may be prescribed.

(4) Any tax deducted under Sub-section (1) and paid to the account of the State Government shall, on production of the certificate of tax deduction under Sub-section (3) by the payee be deemed IO be (ax paid by the payee for she relevant period and should be given credit in his assessment accordingly." From the above, it is clear that ever)'' person responsible for making any payment or discharging any liability on account of any amount payable for transfer of property in goods involved in a works contract or every person responsible for paying sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under the said Act to the Government or to a company, corporation, board, authority or any other body by whatever name called, owned, financed or controlled wholly or substantially by the Government or a public company shall, at the time of credit to the account of or payment to the payee of such amount in cash, deduct tax therefrom in the prescribed manner at the rate specified in the Rules made thereunder. However, if the amount does not exceed Rs. 5,000/- in any financial year such deduction shall not be made. The tax so deducted shall be paid to the Government in the manner and within the time prescribed therein. Thereafter also the person making such deduction of tax and paying it to the account of the Government shall have to issue a certificate of tax deduction to the payee in the manner prescribed therein. The tax deducted and paid to the Government be deemed to be the tax paid by the payee. In all these process the person responsible for discharging those liabilities has to follow the procedure prescribed u/s 27 of the Act and the Rule 35 of the Rules. Petitioners in all the Civil Rules being "public companies" now as per the said section are under obligation to deduct tax at source and thereafter make deposit of it to the Government. The Petitioners have challenged this provisions of the Act, viz, the obligation to deduct tax at source by "the public companies" in respect of the sale and purchase of any goods and pay the same in the treasury every month and maintain records. According to the Petitioners this procedure is onerous, expensive, besides arbitrary and unreasonable. Petitioner also challenged the validity of this piece of legislation, namely, Section 27 requiring the public companies to deduct tax at source and deposit it to the Government in the manner prescribed therein, is violative of Articles 14 and 19(g) of the Constitution of India.

4. Contention of the Petitioners is that making them liable to deduct tax at source and thereafter deposit it to the Government are on the basis of unreasonable differentiation inasmuch as the individual or a Hindu undivided family are left out from the purview of Section 27 of this Act. According to them, there is no reasonable classifications. Equals are treated as unequals, therefore, provisions contained in Section 27 making obligatory on the part of public companies to deduct tax at source and follow the procedure is arbitrary, unreasonable and without having nexus to the object sought to achieve viz, smooth realisation of tax. Therefore, this provisions contained in Section 27 of the Act is ultra vires being violative of Art 14 of the Constitution and liable to be struck down. The restrictions imposed on the public

companies to deduct tax at source and follow the procedure is an unreasonable restriction on the right of the Petitioners to carry on its trade and therefore, it is also violative of Article 19(1)(g) of the Constitution, hence, liable to be struck down. Petitioners have therefore, approached this Court filing the above Civil Rules to declare the Section 27 as illegal, unconstitutional, ultra vires and void.

5. Respondents have entered appearance and filed affidavit-in-opposition in k Civil Rule No. 2046/94. They have supported the provisions of Section 27 of the Act making obligatory to the public companies to deduct tax at source and deposit f it to the Government in the manner prescribed therein.

6. I have heard the parties.

Mr. P.K. Goswami, learned Counsel appearing on behalf of some of the writ Petitioners has challenged the validity of Section 27 of the Act, so far public ''companies are concerned on the ground that the said provision is arbitrary and violative of Article 14 of the Constitution. The Section 27 makes it obligatory to the public companies to deduct tax at source by them while exempting individual and HUF from the purview of the said provisions. Mr. Goswami submits that there is no reasonable classification to make the distinction of the public companies with the individual and HUF and other private companies because all these are situated in a similar position. This classification is unreasonable without there being any nexus with the object sought to be achieved, in view of that provisions contained in Section 27 of the Act, so far the public companies are concerned and therefore, is liable to be declared ultra vires on the ground of violation of the equality clause of the Constitution. Mr. Goswami further submits that putting obligation to deduct tax at source under the Act and to deposit it to the Government in the manner prescribed therein is unreasonable restrictions imposed on Petitioners company in carrying on their business, therefore, this provisions violates the provisions of Article 19(1)(g) of the Constitution.

7. Dr. A.K. Saraf, learned Counsel appearing on behalf of some of the writ Petitioners has adopted the arguments advanced by Mr. Goswami. Dr, Saraf, however, has made further submission that Section 27 of the Act put obligation to the public companies to deduct tax at source while paying the sale price. This implies that whenever a purchase is made by a public company in the open market, the company must have with it the tax deduction certificate form which lias lo be issued to the seller as otherwise no seller will allow to deduct tax at source. According to Dr. Saraf this is an unreasonable restriction on the right of the Petitioners to carry on their trade and violative of Article 19(1)(g) of the Constitution. Under the Act levy of sales tax has been provided for at the point of first sale, last sale as well as on intermediary sales. Therefore, the public companies at the lime of making purchase are required to deduct tax at source only on the sales liable to be taxed. Person making the sale to a public company may be a second seller in respect of items taxable at the point of first sale in Assam. In that situation ii will be rather impossible

on the pan of the purchaser to determine and satisfy himself that the sales made by the seller to the public company is a first sale and whether the said seller is liable to pay tax or not. All these onerous and cumbersome procedure put unreasonable restrictions on the public companies in carrying on their trade or business. On equality clause Dr. Saraf submits that classification must satisfy two conditions, namely, (i) this must be founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, but what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Dr. Saraf relies on a decision of the Supreme Court In Harbilas Rai Bansal Vs. State of Punjab and another, Learned Counsel further submits that there is no nexus for classification between a public company or a private company or an individual or an HUF, therefore, Section 27 so far (sic) to public companies, amount to violative of Article 14 of the Constitution.

8. Mr. P.G. Baruah, learned Advocate General of Assam assisted by Ms. R. Borbora, learned Government Advocate, on the oilier hand supports the piece of legislation as valid one. Learned Advocate General has challenged the petitions on |tie ground of maintainability inasmuch as in the petitions no where it is mentioned that the Petitioners are "public Companies" and, that they are affected by the lire-visions of Section 27 of the Act. According to the learned Advocate General ossification made between the "Public Companies" and "Private Companies", HUF, individual" etc. is reasonable and therefore, it cannot be said to be violative provisions of Article 14 of the Constitution, There was also no unreasonable restrictions in carrying on the trade or business of the Petitioners. Therefore, Section 17 of the Act is not violative of Article 19(1)(g) of the Constitution.

9. On the rival contentions of the parties it is to be seen (a) whether the Petitioners are maintainable or not and (b) whether provisions contained in Sect ion n of the Act so far the obligation of the public companies to deduct tax at source is sustainable in law.

10. According to the learned Advocate General, the Petitioners in their Petitions no where mentioned that they are "Public Companies". In the absence of such averments it may not be accepted that the Petitioners are "Public Companies" liable to deduct tax and carry on the obligation pursuant to Section 27 of the Act and Rule 35 of the Rules. It is true that the Petitioners have not specifically mentioned that they are public companies. Petitioners, however, in their petitions state that the Petitioners are "Companies" registered under the Companies Act. In the cause title the Petitioners described themselves as "Company Limited". Section 13 provides the procedure how a company is to be described. Section 13(1)(a) indicates the procedure, which I quote below:

13(1)(a) - the name of the company with "Limited" as the last word of the name in the case of a public limited company, and with'' ''Private Limited'' as the last words of the name in the case of a Private Limited Company.

As per Section 13(1)(a) every "Public Company" must write the word Limited" after its name and every "Private Limited Company" must write the words "Private Limited" after its name. In the present case, the Petitioners have described themselves as "Limited" and not "Private Limited", therefore, in view of the provisions of Section 13(1)(a) it can be safely inferred that all the Petitioners are "Public Companies". In view of the above position, I do not find any force in the submissions of the learned Advocate General in this regard. Accordingly I hold that the petitions are maintainable.

11. In order to appreciate the contentions of the learned Counsel for the parties on the question whether the provisions contained in Section 27 of the Act so far the obligation of the public companies to deduct tax at source is sustainable in law, it will be apposite and expedient to look into some of the provisions of the Act. Section 2(1) defines "Dealer" as follows:

"Dealer" means any person who carried on the business of selling or purchasing goods in the State and includes:

(i) Government and local authority;

(ii) cooperative Society or a club or any association which supplies goods to its members or which sells goods supplied to it by its members;

(iii) a factory, a broker, a commission agent, a del credere agent, and auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of purchasing or selling goods and who has, in the customary business, authority or purchase or sell goods for and on behalf of, or belonging to principals whether resident within or outside the. State and includes a person delivering goods on hire purchase or any system of payment by instalment or making any sale within the meaning of Clause (33) of this section;

(iv) a contractor or a lessor.

"Person" has also been defined u/s 2(26) which 1 quote below : "Person" means any individual or association or body of individuals and includes a department of the Government, a Hindu undivided or joint family, a firm and a company whether incorporated or not, or a public sector undertaking.

10. Section 7 of the Act imposes liability of tax. In exercise of power conferred by u/s 72 of the Act. the Government of Assam has made Rules, known as "Assam General Sales Tax Rules, 1993" which was further amended as "Assam General Sales Tax (Amendment) Rules, 1996". Rule 35 of the Rules prescribes the procedure for

depositing the tax so deducted into the account of the Government. I quote Rule 35 herein below:

35 (1). The amount of tax payable shall be deducted by every person as referred to in Clauses (a) and (b) of Sub-section (1) of Section 27 from the bill or cash memo in respect of sale and supply or works contract and deposited by him/her into the Government treasury by challan in Form XII on behalf of the dealer.

(2) No deduction shall be made under Sub-section (1) of Section 27 where the amount paid of credited by such person in a financial year does not exceed five thousand rupees.

(3) The tax deducted shall be deposited into the account of the State Government in the following manner:

(a) the person deducting the tax shall within ten days from the expiry of each English calendar month, deposit into a Government treasury by the appropriate challan in Form XII, the total amount so deducted from one or more dealers during the immediately preceeding month.

(b) a challan for each deposit in respect of a month shall be filled up in ''quadruplicate and signed by the person making such deposit;

(c) the challan shall specify the Government department, undertaking authority company or corporation with the name and designation referred to in Sub-rule (1) and mention therein in clear detail the name (s) address (es) and sales tax registration No. (s) of the dealer (s) on whose behalf of tax (es) is/are paid;

(d) on deposit of the amount two copies of the receipted challan shall be retained by the Government treasury, of which one copy shall be sent to the Assessing Officer of the area alongwith the treasury advice list and the other two copies of such receipted challan shall be returned by the treasury to the person making such deposit; and

(e) One copy of the receipted challan shall be sent by the person deducting and depositing the tax to the Zonal Deputy Commissioner of taxes under whose jurisdiction the office of the person is situated for getting such deposits adjusted towards tax liability of the dealer (s).

(4) The person who deducts and deposits any amount under Sub-rule (1) shall, within seven days from the date of deposit of the amount deducted from any payment made to a dealer, issue to the dealer concerned, a certificate of tax deduction in deposit, together with attested photocopy of the challan. The dealer shall furnish one copy of the certificate and the Challan copy for adjustment of such deposit against his dues to the Assessing Officer of his area.

(5) No deduction of tax u/s 27 shall be made in case of supply of goods where such sale, is certified by the Assessing Officer as being not liable to tax. Such certificate

shall invariably be embodied in each bill to be presented for payment.

11. As per Rule 35 of the Rules a registered dealer is required to submit returns showing payment of taxes, Petitioners have stated that to run and maintain the garden the Petitioners have to make purchases of many items, like pesticides, fertilizers weedicides, tea chests, fencing materials, coal, fuels, fire wood, food stuff, HSD, Petrol, medicine etc. In fact, the Petitioners'' tea companies have to purchase materials worth several lakhs in a year to maintain their gardens. Besides, the tea gardens are situated away from the treasury offices. The new provisions of deducting tax and depositing it within the period mentioned in the treasury would cause tremendous and unnecessary hardship to the Petitioners companies. Petitioners alongwith various other tea estates through the Assam Branch of Indian Tea Association submitted representations before the Government and prayed for amendment of Section 27 of the Act. However, no definite decision was taken by the Government. But the Government considering the enormous difficulties pointed out by the industry did not insist on compliance of the provisions of the Act so far. According lo the Petitioners, they became the tax collecting authority, which otherwise, is not the job of the lea gardens. The tea gardens are maintained by few staff and these staff have to submit returns under various other Acts and Rules. Section 27 makes it obligatory on the part of the "Public Companies" to deduct tax at source and the staff working in the tea gardens have their allotted duties and their hands are full. If they have to perform the additional duties as imposed by the provisions of Section 27 they have to appoint additional employees to discharge their obligations.

12. u/s 27(1)(a) every person not being an individual or a Hindu undivided family responsible for making any payment or discharging any liability; on account of any amount payable for the transfer of property of goods involved in a works contract as specified in Schedule VI or for the transfer of the right to use any goods specified in Schedule VII for any purpose, or (b) every person responsible for paying sale price or consideration or any amount purporting to be the full or part, payment of sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the Government or to a company etc. owned, financed; or controlled wholly or substantially by the Government etc. at the time of credit-to the account of or payment to the payee of such amount in cash, by cheque, by I, adjustment or in any other manner, deduct tax therefrom in the prescribed manner at the rate specified in the Schedules of the Act. However, proviso to Section 27 makes it clear that no deduction shall be made under this sub-section, where the amount paid or credited by such person in any financial year does not exceed the prescribed amount. In the present case the prescribed amount is Rs. 5,000/-.

13. From the perusal of the various provisions it appears that in case of any labour contract every person, not being an individual or HUF, responsible for making any

payment or discharging any liability is required to deduct tax at source and to deposit it to the Government in the manner prescribed in Section 27. Mr. Goswami has strenuously argued that there is no distinction between private companies or individuals or HUF and Public Companies. There is no reasonable and rational basis for excluding such persons who are similarly situated, therefore, the same is liable to be struck down on the ground of violative of Article 14 of the Constitution. The object of Section 27 is to reduce tax evasion by persons liable to pay tax. This object is equally applicable to the private companies, HUF and individual etc.

14. Vires of a piece of legislation can be challenged on the ground of violation of equality clause of the Constitution. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. The principle does not take a way from the State the power of classifying persons for legitimate purposes. It is true that every classification is in some degree likely to produce some inequality, and mere existence of some inequality is not enough. Differential treatment does not perse constitute violation of Article 14 of the Constitution, It denies equal protection only when there is no reasonable basis for the differentiation. Article 14 prohibits class legislation and not reasonable classification for the purpose of legislation. If the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a ''well-defined class'', it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. When a law is challenged denying equal protection, the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of legislation. To find out whether the differentiation made in any piece of legislation is reasonable or not it should be viewed in relation to the object of legislation. To achieve a particular object if some classification is made with person or group of persons or authorities, then it may not violate the equality clause of the Constitution. It is not necessary that the classification, in order to be valid, must be fully carried out by the statute itself. It has been held in various decisions of the apex Court that the legislature may make i valid classification in any of the following manner:
(a) The statute itself may indicate the persons of things to whom its provisions are intended to apply:

(b) Instead of making the classification itself, the State may lay down the principle or policy for selecting or classifying the persons or objects to whom its provisions are to apply and leave it to, I m, discretion of the Government or administrative authority to select such persons or things, having regard to the principle or policy laid down by the Legislature:

(c) The Legislature may itself select certain objects to which the law should, in the first instance, apply and then empower the Executive to add other like objects according to the exigencies calling for application of the law.

15. From the above discussions it is clear dial it is the duly of the Legislature to indicate the reasonableness of the classification. The Legislature to indicate the reasonableness of the classification. The Legislature must indicate why a particular person or group of persons is treated differently with others. If the Legislature does not want to make the job itself it can delegate the power to Executives giving guidelines. Reason for classification and the nexus with object sought to be achieved must be indicated in the impugned legislation, or it should be gathered from various circumstances.

16. Mr. Goswami advancing his argument has placed reliance on a decision of the apex Court in Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, The apex Court in the said decision held thus:

...It is true that the presumption is in favour of the constitutionality of legislative enactment and it has to be presumed that a Legislature understands and correctly appreciates the needs of its own people. But when on the face of a statute there is no classification at all, and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, this presumption is of little or no assistance to the State.

17. u/s 27 of the Act, the Government, me Government Companies and the Public Companies are under obligation to deduct tax at source and deposit it to the Government in the manner prescribed therein. Mr. Goswami in this connection has drawn my attention to the piece of legislation prior to the enactment of the Act. Under the previous Act the Government was empowered to notify the authority or persons who were to deduct tax at source. Pursuant to the provisions of the earlier legislation, notification had been issued by the Government. As per the said notification two categories of persons were required to deduct tax at source, viz, the Government and Government companies. But the present legislation has also included "the Public Companies". Now the "Public Companies" are also under obligation to deduct tax at source and deposit it to the Government in the manner prescribed therein. Referring to this piece of legislation, Mr. Goswami submits that the present Petitioners have challenged the inclusion of the "Public Companies" on the ground that there was no reasonable classification. Object of deduction of tax at source has clearly been mentioned in the Statutes. This object is to avoid evasion of tax. The Government and the Government Companies are required to deduct tax. Mr. Goswami, however, has not made any submission as to whether the obligation of the Government and the Government Companies to deduct tax at source and deposit it to the Government as mentioned in Section 27 of the Act was illegal as there was no reasonable classification between the public companies and private

companies or individual or HUF. While making his submission Mr. Goswami has indicated that though he has nothing to say in respect of Government and Government Companies, nevertheless he submits that it may be because that sales tax was to be received by the Government and the Government is also under statutory obligation to pay sales tax. Instead of giving the tax to the Department and taking back by the Government may be an unnecessary and cumbersome procedure. Therefore, in all probability, Mr. Goswami submits that it would be expedient to deduct tax at source. Similar is the case with Government Companies. Tins classification may be reasonable. But Mr. Goswami submits that there was no such differentiation between Private Companies or HUF or individual and Public Companies. A copy of the amending Act was also produced before me the statement and object of the said piece of legislation does not indicate why and how the Public Company can be differentiated with Private Company, HUF or individual, because the object of deduction of tax is to safeguard the tax collection, so that there may not be evasion of tax. As already held by the Supreme Court whenever a group is distinguished from other, though they are similarly situated, it must indicate why such distinction is made. I do not find any intelligible classification between "Public Company" and "Private Company or HUF or individual". As these are situated similarly. Therefore, in my opinion, the Section 27 of the Act, so far public company is concerned is violative of Article 14 of the Constitution and liable to be struck down.

18. When a statute is challenged on the ground of violation of Article 14, the scope of inquiry as to the reasonableness under Article 14 is not the same as that under Article 19, of course, there is an area where the requirements of the two articles may converge, say for instance, where a statute vests unguided or un-canalised discretion in an administrative authority to affect the rights of citizens, the statute may be held to offend Article 14 on the ground that the power to classify conferred by it is unreasonable. At the same lime, the restriction imposed by the statute may be held to be an unreasonable restriction on the citizen''s fundamental rights under Article 19 because the power to restrict those rights has been conferred upon an administrative authority, acting upon his unfettered discretion. The statute which is unreasonable under Article 14 may be held to constitute a reasonable restriction under Article 19 because even where the statute offers a guidance to the administrative authority it may still be held to be an unreasonable restriction if the restraint which is sought to be imposed under the guidance offered by the statute is excessive or uncalled for or otherwise unreasonable having regard to the various circumstances substantive and procedural, according to which the reasonableness of a restriction under Article 19 has to be determined. In certain cases a particular piece of legislation may be found as unreasonable and that is to be declared as ultra vires for violation of Article 14 on the ground that the provision was unreasonable and the distinction between two groups was without any basis or reason. At the same time, the same piece of legislation may be found not violative of Article

19(1)(g) inasmuch as, the restriction imposed (sic) not be unreasonable restriction to cans out their trade or business.

19. Article 19(1)(a) to (g) gives certain freedoms to every citizen. This Article confers various rights to the citizens of the country including the right to practice any profession or to carry on any occupation, trade or business. But Sub-section (2) to (6) of the said Article empowers the State Government to make law putting reasonable restrictions Article 19(6) relates to the power of the State to put restrictions to practice any profession or to carry on any trade or business or occupation. However, this restriction must be reasonable and in the interest of "the general public". This expression occurs in both Clauses (5) and (6). The expression "General Public" may however be sometimes used only with a limited person or group of persons. A legislation may be "in the interests of the general public", even though it affects the interests of a particular individual, or even causes hardship to particular individual or group of persons, owing to the peculiar conditions in which they are placed. This freedom only means that every citizen has right to choose his own employment or to take up any trade subject only to the limits as may be imposed by the State in the interests of public welfare and on the ground mentioned in Clause (6). In our Constitution, every citizen has the right to engage in any business which is known to the common law, as of right, and the State has the power to regulate or; restrict any business on the grounds specified in Clause (6). There are certain activities which are so inherently pernicious that nobody can be considered to have a fundamental right to carry them on as a trade or business. Under Article 19(g)(6) the State has the power to impose certain restrictions in the interest of "general public". The expression of "in the interest of general public" is wide enough and may include within its ambit the interests of public health and morals, economic stability of the country, equitable distribution of essential commodities at fair prices, maintenance of purity in public life, prevention of fraud, improvement of the conditions of farmers or working class and also implementation of the provisions contained in Part-IV of the Constitution, and smooth realisation of tax.

20. For a welfare State collection of taxes is an important aspect in the governance of a country. With tax, welfare activities are carried on, therefore, the State is required to see that tax is realised so that such tax can be utilised in the Welfare activities of the State. While doing so, it has also the right to see that the authorities, who are responsible to collect tax is realising it efficiently without fail. The State should also to make endeavour to prevent tax evasion. If the payment of tax is evaded the State Government will not be able to carry out its activities and thereby the developmental works of the State is halted, on order to realise tax effectively, the State may pass orders imposing obligation on any person carrying on business and such restriction cannot be said to be unreasonable. However, the State should justify the action in putting such restrictions and it must be reasonable at the same time.

21. Mr. P.K. Goswami has placed reliance on the following cases:

Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, : Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, : State of Madras Vs. V.G. Row, and Mohd. Hanif Quareshi and Others Vs. The State of Bihar,

Mr. P.G. Baruah, learned Advocate General also has placed reliance on the following decisions:

Narendra Kumar and Others Vs. The Union of India (UOI) and Others, : M.A. Rahman and Others Vs. The State of Andhra Pradesh, and State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.,

22. In the State of Madras Vs. V.G. Row, the Supreme Court held that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, me underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, Considered them to be reasonable.

23. In Mohd. Hanif Quareshi and Others Vs. The State of Bihar, while considering the nature of restriction imposed under Article 19(1)(g) read with Clause (6), the apex Court observed thus:

Clause (6) of Art 19 protects a law which imposes in the interest of the general public reasonable restrictions on the exercise of the right conferred by Sub-clause (g) of Clause (1) of Article 19. Quite obviously it is left to the Court, in case of dispute, to determine the reasonableness of the restrictions imposed by the law. In determining that question the Court, we conceive, cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by Sub-clause (g) is expressed in general language and if there had been no qualifying provision like Clause (6) the right so conferred would have been an absolute one. To the person who has this right any restriction will be irksome and may well be regarded by him as unreasonable. But the question cannot be decided on that basis. "What the Court

has to do is to consider whether the restrictions imposed are reasonable in the interests of the general public....

The Supreme Court also reiterated the decision quoted above in State of Madras v. G. Row.

24. Again in Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, the Supreme Court observed that when an enactment is found to infringe any of the fundamental rights guaranteed under Article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of Clauses (2) to (6) of that Article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid.

25. The learned Advocate General placed reliance on a decision of Supreme Court in Narendra Kumar and Others Vs. The Union of India (UOI) and Others, In the said decision the Supreme Court had the occasion to consider the question of reasonable restrictions, The Supreme Court observed thus:

...It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws "inconsistent" with Article 19(1) or" taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot therefore be accepted. It is undoubtedly correct, however, that when, as in the present case, the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court....

...In applying the test of reasonableness the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public.

26. In another decision in M.A. Rahman and Others Vs. The State of Andhra Pradesh, the Supreme Court observed thus:

...Therefore, the provision for cancellation of registration for failure to pay the tax or for fraudulently evading the payment of it is an additional coercive process which is expected to be immediately effective and enables the State to realise its revenues which are necessary for carrying on the administration in the interest of the general public. The fact that in some cases restrictions may result in the extinction of the

business of a dealer would not by itself make the provision as to cancellation of registration as unreasonable restriction on the fundamental right guaranteed by Article 19(1)(g).

The Supreme Court while dealing with the aforesaid case also referred to a decision of the apex Court in Narendra Kumar v. Union of India (Supra) wherein it was held thus:

...the word ''restriction'' in Articles 19(5) and 19(6) of the Constitution includes cases of ''prohibition'' also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than was necessary in the interests of the general public.

27. In State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., the Supreme Court while considering the reasonable restriction in case of prohibition of liquor held that mere allegation of unreasonableness was not enough to strike down an enactment. Violation of any of the rights guaranteed under Clauses (a) to (g) of Article 19(1) must be shown as not saved by any of the Clauses 19(2) to 19(6). The apex Court also reminded by observing that the Court cannot sit in judgment over the wisdom of the legislature and strike down an Act saying that it was unjustified. Doctrine of proportionality is also not applicable for impugning an enactment. The Apex Court further observed that prohibition of production and/or and manufacture of intoxicating liquor while exempting toddy from the said prohibition cannot also be said to be discriminatory. Toddy is a class apart, as it is drawn from trees. The Act and Rules make a clear distinction between toddy on one hand and other intoxicating liquors on the other, though it may be that toddy is also included within the meaning of intoxicating liquors. In the circumstances, it cannot be said that it is not a case of reasonable classification having regard to the object of legislation. Moreover, it is always open to the State to introduce prohibition in stages. It is not necessary that the prohibition should be total and absolute whenever it is imposed.

28. From the above decisions it is clear that restriction can be imposed under Article 19(1)(g), however, such restriction must be within the ambit of Article 19(1)(g)(6). Therefore, special care has to be taken by the Court to see that the test of reasonableness is satisfied. In each case, it depends on the nature of infringement. Bach legislation stands on its own footing. Considering all these it is the duty of the Court to see whether the restrictions imposed are reasonable and in the interests of general public. It is also correct that such restriction can be imposed in the interest

of general public. Mere allegation of unreasonableness is not sufficient ground for striking down an enactment. Violation of any of the rights guaranteed under Article 19(1)(g) must be shown as not saved by any of the provisions of Article 19(6). The apex Court in State of AP v. Mc Dowell & Co. (Supra) held that the Court cannot sit in judgment over the wisdom of the Legislature and strike down an act saying that it was unjustified. The Court shall have to be very cautious in deciding whether restriction put by the State is reasonable or not. It may some time lead to extinction of a particular industry but that does not mean that we restriction imposed by the State is unreasonable. The restriction will not be struck down unless it is shown that it is not covered by any of the provisions of Article 19(2) to (6). As referred to above, if any restriction is put by a piece of legislation on any person this must be Saved bY the provisions of Article 19(2) to (6). The Court shall not set aside merely because it is harsh, onerous or cumbersome. It is the wisdom of the Legislature. The Legislature is competent to make law as per the provisions of the Constitution. If any piece of legislation is constitutionally valid and within the ambit of Article 19(1)(g)(2) to (6) the legislation cannot be struck down en tie ground that the provisions of the legislation is harsh. The Court cannot sit over the wisdom of the [Legislature and cannot strike down the piece of legislation merely because such'' piece of Legislation may cause difficulties and hardship to citizen or a group of (citizens. The learned Advocate General has given much emphasis on this principle. I find sufficient force in the submission of Mr. Baruah.

29. Considering all the aspects of the matter, I do not find any unreasonable ''restriction in Section 27 of the Act by imposing obligation to Public Companies to deduct tax at source and deposit it to the Government, because, in my opinion, it is a pan of the business, one has to perform while doing his trade or business. Hence, I find that the provisions contained in Section 27 of the Act so far it relates to "Public Companies" is not violative of Article 19(1)(g) of the Constitution. However, if it is found that while implementing the provisions contained in Section 27 of the Act, that there are some difficulties, it is for the Legislature or Rule making authorities to consider the same and take appropriate steps in this regard. In my opinion, the Court has no business to interfere with the wisdom of the Legislature or Rule making authority inasmuch as mere is no unreasonable restrictions within the meaning of Article 19(1)(g) of the Constitution;

30. In view of the above, 1, therefore, hold that the provisions contained in Sect ion 27 of the Act so far making obligation on the'' ''Public Companies'''' to deduct tax at source and deposit it to Government in the manner prescribed is not violative of Article 19(1)(g) of the Constitution, but it is violative of equality clause of Article 14 of the Constitution, inasmuch as, there is no reasonable classification between "Private Companies" or "HUF or individual" and the "Public Companies". Therefore, this provisions so far it relates to "Public Companies" is ultra vires on the ground of violative of Article 14 and accordingly, the said provision contained in Section 27 of the Act is struck down and quashed.

31. With the above observation the petitions are allowed to the extent indicated above. However, considering the facts and circumstances of the case, I make no order as to costs.