# Canara Bank and others Vs State of Kerala and others

**Court:** High Court Of Kerala

**Date of Decision:** June 1, 1981

**Acts Referred:** Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 â€" Section 10, 2(d), 3(3)
Constitution of India, 1950 â€" Article 246, 276(1), 276(2), 276(2), 277
Government of India Act, 1935 â€" Section 143(2)
Income Tax Act, 1961 â€" Section 2(31)

**Citation:** AIR 1982 Ker 1 : (1981) 2 ILR (Ker) 649

**Hon'ble Judges:** P. Subramonian Poti, Acting C.J.; P.C. Balakrishna Menon, J; George Vadakkel, J

**Bench:** Full Bench

**Advocate:** T.R.G. Warrier, Sebastian Davis, K.P. Radhakrishna Menon, K.K. Ravindranath, S. Easwara Iyer, S. Subramoni, V. Rama Shenoi, R. Raya Shenoi, T.R. Raman Pillai and T.R. Ramachandran Nair, for the Appellant; C.K.S. Panicker, D.N. Poti, N. Dharmadan, S. Narayanan Poti, S. Sankarasubhan, for the Respondent

## Judgement

George Vadakkel, J.
The ambit of the proviso to Art. 276 (2) of the Constitution is by now well defined by the decisions of the Supreme

Court and of this Court. While Art 276 (2) curtails the legislative power of the State to enact tax laws in respect of professions, trades, callings or

employments for the benefit of the State or a local authority (which power it has despite Art. 246 as clarified by Art. 276 (1) ) by providing that

the total tax payable there under by any one person to the State or to any one local authority shall not exceed Rs. 250/- per annum, the proviso

thereto enables the State Legislature to make legislation for the continuance of any such tax at a higher rate that was in force in any State or any

local authority in the financial year immediately preceding the commencement of the Constitution until Parliament by law provides otherwise. As

ruled by this Court in Travancore Minerals Ltd. v. Commissioner, Quilon Municipality (1965 Ker LJ 376) and State Bank of Travancore v.

Alwaye Municipal Council (ELR (1978) 2 Ker 519): (1979 Tax LR NOC 49) by the proviso to R. 19(1) of the Taxation and Finance Rules in

Schedule II to the Kerala Municipalities Act, 1960 (hereinafter the Kerala Act) the Kerala Legislature has validly provided for the continuance of

the levy of profession tax by the municipalities in this State at the higher rates that were in force in those municipalities as contemplated by the

proviso to Article 276 (2) of the Constitution. The correctness of these decisions on this point is not canvassed before us.

2. It is common case that the Quilon and Kottayam Municipalities were levying profession tax in accordance with the provisions contained in R. 16

(1) in Schedule II of the Travancore Municipalities Act, 1116 (for short: the Travancore Act) in the financial year immediately preceding the

commencement of the Constitution and that these local authorities continued to levy profession tax so till the commencement of the Kerala Act.

Thereunder the maximum profession tax payable by a "person" and a "company" is Rs. 275/- per half year. Where the half-yearly income of either

is more than Rs. 21,000/- the profession tax payable by each is Rs. 275/- for that half year. Under the proviso to R. 16 (1) in the II Sch. of the

Travancore Act, a "company" the half-yearly income of which is more than Rs. 21,000/-, is liable to pay an additional half-yearly profession tax on

such excess income calculated at the rate of one rupee per one hundred rupees or part thereof. The assessees in these cases, namely, the

petitioners and appellants before us, have been assessed by the concerned municipality at the rates that are applicable to "companies" as provided

in the aforesaid R. 16 (1) and its proviso.

3. Four of the assessees herein are corresponding new banks as defined in the Banking Companies (Acquisition and Transfer of Undertakings)

Act, 1970 and the remaining one is a trust. They raise the following questions for consideration in these cases:

(1) are the Municipalities concerned in these cases the same as those constituted under the provisions of the Travancore Act;

(2) in view of S. 153 of the Kerala Act, is a corresponding new Dank liable to pay profession tax;

(3) is a corresponding new bank, a "company" mentioned in S. 91 of the Travancore Act; and

(4) is a trust, a "company" mentioned in Section 91 of the Travancore Act.

4. It is contended by Mr. Govinda Warner appearing in O. P. No, 272 of 1976 that the Quilon Municipality which is concerned in that case is not

"such Municipality" as was levying profession tax at such higher rate at the commencement of the Constitution. The argument is: Quilon

Municipality constituted under the Travancore Act was levying profession tax at a higher rate; but this Municipality is not in existence because:- (i)

under the 2nd proviso to Section 2 of the Kerala Act all Municipalities constituted under the Travancore Act and other Acts repealed by Section 2

thereof are to be deemed to have been constituted, so far as may be, under the Kerala Act and (ii) territorial limits of the Quilon Municipality as

obtained now are different from those obtained earlier.

5. Omitting the words which are not material so far as the present discussion it concerned, Proviso (ii) to Section 2 of the Kerala Act reads:- "All

Municipalities constituted under the Acts hereby repealed, shall, so far as may be, be deemed to have been constituted under this Act". There is no

case (and in view of the above deeming provision, there can be no case) that the Quilon Municipality constituted under the Travancore Act was

abolished or that the Quilon Municipality figuring as a party respondent In some of these cases is a freshly constituted Municipality. The proviso

only bids all concerned to treat the different Municipalities constituted under different enactments which were repealed, as created under the

Kerala Act, so far as may be necessary. The several Municipalities constituted under the repealed enactments owe their origin to the concerned

statute under which each of them was constituted and they continue to exist because they have not been abolished, though the concerned statute

has been repealed. Anything done under a repealed Act is not affected by the repeal is the normal rule and this rule governs these cases, as

otherwise, there is no need to deem, so far as may be, that they have been constituted under the Kerala Act.

6. The alternative contention raised on this part of the case is also equally fallacious. Both the Travancore and the Kerala Acts have, as similar

enactments have, provident enabling the Government to exclude from a Municipality any specified area comprised therein and to include within it

any specified area in the vicinity of it, by notification in the gazette. (See Section 4(1) (b) and (c) in both Acts). This power is different from and

independent of the power conferred on the Government by Section 4(1)(d) of both Acts to abolish any municipality on the one hand and the

power conferred on if by Section 4(1)(a) of both Acts to constitute a municipality on the other. If the contention that with every change of the

territorial limits of a municipality, a new municipality is constituted is correct, the Statute would not, and need not, have conferred on the

Government separate powers, (apart from the Constituent power) to include an area in the vicinity within a municipality and to exclude any area

from a municipality. Further, if the position canvassed for is accepted, the result would be disastrous, in that there will be no continuity of rights and

liabilities of a municipality for, as often as a portion is excluded from or a portion in the vicinity is added on to a municipality there would be a

different municipality which will not have the earlier municipality''s rights and liabilities. So long as the territorial limits are substantially the same and

unless the area is entirely different from the area, the limits of which are defined in the notification constituting it as a municipality, a municipality will

not lose its identity.

7. Our conclusion as above on both the limbs of argument advanced is supported by the following passage in American Jurisprudence, 2nd Edn..

Vol. 56 at p. 56:

The identity, continuity or succession of a municipal corporation will not be destroyed by the repeal of its charter, by a change of its name, by an

increase or diminution of its territory or population, by a change in its mode of government, or by a combination of all these, if the people and

territory reincorporated constituted an integral part of the corporation abolished.

Relying on the above passage our learned brother Khalid, J. replied a similar contention advanced in Kerala State Electricity Board v. State of

Kerala, 1978 Ker LT 233: (1978 Tax LR NOC 74) with reference to the Cochin Municipal Act, 1113 and we are in complete agreement with

what is stated therein on this point.

8. The decision in the The Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another, relied on by Mr. Warrier

concerned construction of Article 277 of the Constitution, which, unlike the proviso to Art. 276 (2), uses the expression : ''may continue to be

levied and to be applied to the same purpose until provision to the contrary is made by Parliament by law''. Mark, the words used in the proviso to

Art. 276 (2) are: ''may continue to be levied until provision to the contrary is made by Parliament by law''. In this case the Supreme Court relied on

its earlier decision in Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, wherein that Court construed S. 143 (2) of the Govt, of India Act,

1935 which is pari materia with Article 277 of the Constitution. In these cases the Supreme Court, no doubt, said that the Provincial Legislature

would have a right to legislate for the continuance of the tax provided, inter alia,-

that the identity of the body that collects the tax, the area for whose benefit the tax is to be utilised and the purposes for which the utilisation is to

take place continue to be the same.

However, these decisions are founded on the collocation of the two expressions ''continue to be levied'' and (continue) ''to be applied to the same

purposes''. This is what is emphasised by the Supreme Court when it says that ''the area for whose benefit the tax is to be utilised'' (has to)

''continue to be the same''.

9. We do not think that these two decisions and the decision in R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another, which follows the

Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, , are of any assistance to Mr. Warner to contend that Quilon Municipality which is

before us as a party respondent is an entity different from the Quilon Municipality that was constituted under the Travancore Act.

10. In each of the first four cases, O. P. 272 of 1976, O. P. 785 of 1976, W. A. 184 of 1979 and A. S. 69 of 1969, the assessee is a

''corresponding New Bank'' as defined in Section 2 (d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, viz.

Canara Bank, United Commercial Bank, Indian Bank and Syndicate Bank. On behalf of the first mentioned three Banks it is contended that the

said Banks are wholly owned by the Central Government and that therefore, they are exempt from payment of profession tax u/s 133(1) of the

Kerala Act A mere look at the section is sufficient to dismiss this argument Section 133(1) provides that nothing contained in Chapter VI of the

Kerala Act relating to Taxation and Finance shall be construed to make liable the Government to pay profession tax in respect of any commercial,

industrial or like other undertakings which are owned by or on behalf of the Government.

It is doubtful whether the word Government in Section 133 is comprehensive enough to take in any other Government than this State Government.

The next sub-section of Section 133 enables the Government, and the municipal council with the sanction of the Government, to exempt any

person or class of persons wholly or in part from payment of any tax. It cannot be that the Government mentioned in that sub-section is any

Government other than the Kerala State Government. If that be so, the Government referred to in sub-sec. (1) of Section 133 also is this State

Government and no other Government.

11. Moreover the legislative scheme appears to be, as is evident from Section 279 of the Kerala Act relating to exemption of Government from

taking out licences, to specifically mention the State Government and Central Government whenever it is required; to refer to both the

Governments. The legislative intent that is discernible from Sec. 133(1) is also that even if any commercial, industrial or other like undertakings

which are owned by, or managed by or on behalf of, the Govt. are liable to pay any profession tax, nothing contained in Chapter VI shall be so

construed as to make liable the Government to pay it. We may also refer to sub-section (7) of Section 10 of the Banking Companies (Acquisition

and Transfer of Undertakings) Act, 1970 where under every corresponding new bank is to make provision for, amongst others, all other matters

for which provision is necessary under any law, or which are usually provided for by banking companies, and the corresponding new bank need

transfer to the Central Government only the balance of profits. There is no merit in this contention.

12. Is a corresponding New Bank a company as defined in the Travancore Act is the next point that falls for consideration. The Travancore Act,

by S. 3(8) defines a company as '''''''Company'''' means a company as defined in the Travancore Companies Act 1114 and includes any firm or

association carrying on business in Travancore whether incorporated or not and whether its principal place of business is situated in Travancore or

not"". The learned counsel for the Quilon Municipality, Mr. Narayanan Poti, in this context referred us to Section 91(1) of the Travancore Act

which classifies assesses as ''persons'' and ''companies''.- The argument runs as follows: the expression ''person'' in Section 91 means a natural

person and is not comprehensive enough to include any artificial person; all artificial persons come within the expression, ''Company'' in S. 91(1); a

corresponding new bank is not a natural person but an artificial person. Therefore it is a company. According to the learned counsel, the definition

in Section 3(8) in the Travancore Act of the word company is not exhaustive but is only illustrative. He in this behalf relied on the inclusive

definition of that expression as per S. 3(8) of the Travancore Act. It is his case that the word ''company'' in common parlance means any artificial

person, i.e., all persons other than natural persons..

13. A ''person'' for the purpose of law is someone or something who or which, as recognized by law. is capable of having rights and duties. The

most common example is a natural person or an individual who is a human being. All other persons recognized by law as capable of having rights

and duties are artificial persons. An artificial person is normally a collocation of individuals or an association of individuals but there are other kinds

of artificial persons as well, such as, for example an idol which is clothed with personality by the law of our country. A ''company'' in common

parlance means a collocation or association of a number of natural persons or individuals formed for the purpose of some business or undertaking

carried on in the name of the association, each member having the right to assign his share to any other person subject to the contractual regulations

governing the members, and may be incorporated or unincorporated.

(sic) incorporation such an association becomes a legal entity distinct from its members. As stated in Gower''s Principles of Modern Company law:

''in common parlance the word company is normally reserved for those associated for economic purposes, i.e. to carry on a business for gain''.

James L. J. in Smith v. Anderson, (1880) 15 Ch 247 (at p. 273) pointed out that there is no difference between a ''company'' and an

''association''. He aid : The word ''association'' in the sense in which it is now commonly used, is etymologically inaccurate, for ''association'' does

not properly describe the thing formed, but properly and etymologically describes the act of associating together, from which act of associating

there is formed a company or ''partnership''. Note, a succession of natural persons to whom law attributes personally (sic), a corporation sole,

consisting of one natural person at a time in succession is not a company or association like a collocation of natural persons; nor is an idol a

company or association. ''Company'' or ''association'' is an artificial person but all artificial persons are not ''companies'' or ''associations''.

14. On this part of the case, another contention was raised by Mr. Poti and that is based on She inclusive definition of the word ''company'' in

Section 3(8) of the Travancore Act; the contention is that roe definition is not restrictive but extensive. We are asked to understand the word

''company'' as signifying not only those things enumerated in Section 3(8) of the Travancore Act, but all artificial persons. According to the learned

counsel the things enumerated therein are only illustrative and not exhaustive. The words used in Section 3(8) are: ''Company'' means and includes

We cannot do better than quote the following passage from Dilworth v. Land and income tax Commissioner. ( (899) AC 99 at p. 105; to repel the

above contentions :

But the word ""Include"" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it

was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ""mean

and include"", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be

attached to these words or expressions,

(emphasis supplied).

15. A Full Bench of this Court in Krishnan Nair Vs. Perumbalath Kizhakkiniyakath Manakkal Karnavan and Another, said almost the same thing

as follows (at p. 278 of AIR) :

A definition which first tells us what a thing means and then goes on to say what it includes, can use the inclusive device for three entirely different

purposes. First, by way of illustration, or of enumeration of the forms the thing defined commonly assumes, by meaning things that clearly come

within the meaning given. Secondly, for roping in things that, either partly or in whole, would not come within the meaning. Thirdly. by way of

abundant caution, so as to put it beyond doubt that certain things do come within the meaning.

It cannot be said ''firm'', ''association'' included within the meaning of the word ''company'' by Section 3(8) of the Travancore Act are illustrations

or enumeration of the forms of company as defined in the Travancore Companies Act, 1114 which that expression means as per that section. And.

certainly neither a firm nor an association is a company as defined in the Travancore Companies Act, 1114. wherefore the inclusive device has not

been used in Section 3(8) of the Travancore Act on the principle abundans cautela non nocet (there is no harm done by great caution). In this

provision this device has been used only to achieve the second purpose mentioned by Raman Nayar Ag. C J. in the above case, namely, for roping

in firms and associations within the meaning of the word "company", as assigned to it by that provision. In such a case the definition is exhaustive. If

the definition was "company" includes "this" and "that", different consideration might have arisen which we need not pursue in these cases, despite

elaborate arguments on that aspect and citation of a large number of authorities in support of the respective contentions, for and against, by either

side.

16. Relying on Dilworth v. Land and income tax Commr., (1899) AC 99 the Orissa High Court in Satrughna Sahu Vs. The State of Orissa and

Others, cited by Mr. Rama Shenoi on behalf of the appellant in A. S. 69 of 1979 held that the expression "mean and include" in a definition clause

rendered the definition exhaustive of the matter defined and not expansive. This accords with the view expressed by us in the preceding

paragraphs. Mr. Parameswara Panicker, the learned counsel for the Kottayam Municipality referred us to the Hyderabad Asbestos Cement

Products Ltd. v. Employees" Insurance Court, (1976) 1 Andh WR 344: (1976 Lab IC 868) (Andh Pra) (FB) to contend for the position that

even in conjunction with the expression "means", the word "includes" would indicate that the definition is not exhaustive but only enumerative. The

Andhra Pradesh High Court was in that case considering S. 38 of the Employees" Insurance Act, 1948. Under that provision "all employees in

factories or establishments" to which that Act applied shall be insured as provided by that Act. The question raised was whether the employees in

the sales office - an establishment to which the Act has not been made applicable - as distinct from the employees in the factory, had to be insured.

It was held that as per the definition, the word "employee" "includes any person employed for wages on any work connected with distribution or

sale of the products of the factory", and mat, therefore, though the employees of the sales office are not employed in the factory, they are

employees who had to be insured. This decision proceeds as if the expression "means and includes" denotes an exhaustive definition, though that

expression as such was not explained therein and in spite of the fact that the word "means" at also the word "includes" were examined disjointly.

We see nothing in this decision that goes to support the contention advanced before us.

17. Of the several classes of artificial persons, one class, namely, companies are treated as a separate class u/s 51 of the Travancore Act, the

classification of persons therein being into "persons" and "companies". Why such a classification of persons into "persons" and "companies" in

Section 91 of the Travancore Act ? The object is not far to seek, for the answer thereto is afforded by Section 16 in Schedule 11 of that Act,

where under "companies" are treated differently for the purpose of levy of professional tax; companies whose half-yearly income is above Rs.

21,000/- are, there under, made liable for an additional-half-yearly profession tax. In other words, the tax liability of such companies is heavier and

harsher. In this backdrop, the scope of enlargement of the word "company" by Section 3(8) of the Travancore Act by the inclusive device has to

be confined strictly to the extent it specifically enlarges its scope. In Partington v. Att-Gen, (1869) 4 HL 100 Lord Cairns said

I am not at all sure that, in a case of this kind a fiscal case - form is not amply sufficient; because, as I understand the principle of all fiscal

legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to

the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject

is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute,

what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of

the statute. (as quoted in Craies on Statute Law, 7th Edn., p. 113).

Apply to the above rule (sic). The word "company" as defined in Section 3(8) of the Travancore Act, then, means a company as defined in the

Travancore Companies Act, 1114 and also, any firm or association carrying on business in Travancore whether incorporated or not and whether

its principal place of business is situated in Travancore or not, and no other persons, natural of artificial.

18. A corresponding new bank is not a company as defined in the Travancore Companies Act, 1114 nor is it even a company as defined in the

Indian Companies Act, 1956 which replaced the former statute. There is no case that it is a firm. The crucial question that falls to be decided so far

as the first four cases are concerned, is whether a corresponding new bank, is an association, and, therefore, a company mentioned in Section 91

of the Travancore Act read with Section 3(8) thereof.

19. Considering the words "company", "association" and "partnership" James L. J. in

Smith v. Anderson, (1880) 15 Ch 247 (at

p. 273) said :

A company or association (which I take to be synonymous terms) is the result of an arrangement by which parties intend to form a partnership

which is constantly changing, a partnership today consisting of certain members and tomorrow consisting of some only of these members along

with others who have come in, so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new

partnership, and with the intention that, so far as the partners can by agreement between themselves bring about such a result, the new partnership

shall succeed to the assets and liabilities of the old partnership.

And in re Stanley. Tenant v. Stanley. (1906) 1 Ch 131 (134) Buckley, J. stated as follows :

The word ""company"" has no strictly technical meaning. It involves, I think, two ideas - namely, first that the association is of persons so numerous

as not to be aptly described as a firm; and secondly, that the consent of all the other members is not required to the transfer of a member''s interest

It may, but in my opinion here it does not, Include an incorporated company. The words ""corporation"" or ""company"" here mean, I think, an

incorporated body or an unincorporated body which is ""municipal, commercial or otherwise"", and which is of such a kind as not to be what is

commonly called ""a firm"".

20. These decisions make it clear that an association or company cannot be formed unless : (i) there are more persons than one; and (ii) there is an

arrangement or agreement between them as regards the object of their associating with one another, say for example, entertainment (a club) or

worship (a congregation) or carrying on of business which is the object mentioned in Section 3(8) of the Travancore Act. Speaking of ''association

of persons'' in Section 2 (31) of the income tax Act, 1961, one of us (the learned Acting Chief Justice) pointed out in Comrar of income tax v. T.

V. Suresh Chandran, (1979) 13 Cur Tax Rep 366 : (1980 Tax LR 328) (Ker) that in order that there may be an association of persons, the

persons concerned should have combined or come together by a consensual act on their part, that is, on their own volition.

21. Now apply these tests to a corresponding new bank. There is neither plurality of persons nor (obviously) any consensus. u/s 3 (3) of the

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter the Act) as per sub-section (i) of Section 3 of which Act

corresponding new banks have been constituted, the entire capital of each corresponding new bank stands vested in, and allotted to, the Central

Government. Under Sec. 4 the undertaking of every existing bank, to take over the undertakings of which, the Act has been enacted, is transferred

to and vests in the corresponding new bank. No doubt, u/s 7(2) of the Act, the general superintendence, direction and management of the affairs

and business of a corresponding new bank vests in a Board of Directors but these directors are appointed by the Central Government in

consultation with the Reserve Bank in the first instance (sub-sec. (3) of S. 7) and thereafter the Board is constituted in accordance with

(constituted by) the Central Government in consultation with the Reserve Bank (sub-sec. (2) (b) of S. 9). However, these directors, appointed or

constituted, as the case may be, do not (to borrow the language of James L. J. in Smith v. Anderson, ( (1880) 15 Ch 247) already referred to)

''come into any arrangement whatever as between themselves''; and there is nothing (again in the language of James L. J.) ''creating any mutual

rights or obligations between these persons. They are from the first entire strangers who have entered into no contract whatever with each other''.

Though u/s 11 of the Act, a corresponding new bank is to be deemed to be an Indian company, this fiction is only ''for the purpose of the income

tax Act, 1961'' and is not available for any other purposes. In view of what is stated above, a corresponding new bank is not an association

envisaged by Section 3(8) of the Travancore Act.

22. On behalf of the respondents-municipalities the decision of this Court in State Bank of Travancore v. Municipal Council, ILR (1978) 2 Ker

519 : (1979 Tax LR NOC 49) was sought to be pressed into service to contend that a corresponding new bank is an association. On the other

side, arguments were advanced canvassing the correctness thereof. We do not think: that we are called upon to examine that case here, and this is

so because that decision concerned the State Bank of Travancore governed by an entirely different statute, viz., the State Bank of India

(Subsidiary Bank) Act. 1959.

23. A corresponding new bank is, therefore, not a company as defined in the Travancore Companies Act, 1114 to attract the first part of Section

3(8) of Travancore Act, nor is it an association or a firm falling under the inclusive portion of that definition clause. Therefore, a corresponding new

bank is not a company mentioned in Section 91 of the Travancore Act and in Rule 16 of the II Schedule thereto. However, it being a body

corporate u/s 3(4) of the Act under which it has been constituted, is a ''person'' mentioned in the aforesaid provisions and is liable to pay

profession tax on that basis.

24. Is a ''trust'', a ''company'' or ''association'', is the question raised in A. S. 77 of 1980. The simple answer is that it is not a pure question of law

that can be decided in the abstract dehors the terms of the trust-deed and the attendant circumstances. Trust being an obligation arising out of

confidence reposed by one in another and accepted by the latter for the benefit of still another, or of that another and the acceptor of confidence, it

can, perhaps, be said that merely by the creation of a trust and without anything more, the author of the trust who reposes confidence, the trustee

who accepts the confidence and the beneficiary or beneficiaries for whose benefit the confidence is accepted, do not constitute a company or an

association. We hasten to caution that the above statement is not dogmatic and the matter requires further and detailed examination applying the

tests stated hereinbefore, viz., (i) plurality of persons, and (ii) consensual arrangement come to between them as regards the common purpose of

their associating with one another, thereby creating mutual rights and obligations.

25. We now proceed to examine these cases one by one.

O. P. 272 of 1976. Petitioner herein, Canara Bank was assessed as a ''company'' to half-yearly additional profession tax by the Quilon

Municipality over and above Rupees 275/-, the maximum leviable from a ''person'' or a ''company'' as profession tax under R. 16 in Section 11 in

the Travancore Act. The assessments impugned are for both the 1st and 2nd halves of 1972-73, 1973-74, 1974-75 and 1975-76 and for the first

half of 1976-77. Exts. P-1 to P-7, P-29 and P-31 are the respective assessments. Canara Bank being a corresponding new bank, is not a

''company'' and can be assessed only as a ''person''. The levy of additional profession tax cannot, therefore, be sanctioned. Exts. P-1 to P-7, P-29

and P-31 and all proceedings arising there from are hence quashed to the extent the petitioner-bank has been assessed to additional profession

tax. Respondents 2 and 3 are directed to re-compute the petitioner''s liability for profession tax on the above said basis. Petitioner-bank shall be

entitled to get refund of all amounts paid by it to this Municipality in excess of the sum reckoned on re-computation as payable by the petitioner-

bank at the rate of Rs. 275/- for each half year. There shall be a direction to the effect that respondents 2 and 3 shall refund such excess amount to

the petitioner-bank.

26. This original petition is disposed of as above stated. There shall be no order at regards costs.

27. O. P. 785 of 1976. The Quilon Municipality has as per Ext P-1 profession tax bill assessed the petitioner-bank, namely. United Commercial

Bank which is a corresponding new bank, to additional profession tax on the basis that it is a ''company''. This is for the half-year ending 31-3-

1976 and is over and above the maximum half yearly profession tax of Rs. 275/- assessed as payable by it for that half year. Ext. P-1 bill to the

extent it assesses the petitioner-bank to additional profession tax is bad and is hereby quashed to that extent. Respondents 1 and 2 are directed to

re-compute the profession-tax-liability of the petitioner-bank for the period in question accordingly.

28. This original petition is disposed of in the manner indicated above. No orders as regards costs.

29. C. A. 184 of 1979. The appellant, Indian Bank, impugns Exts. P-1 and P-2 profession tax bills and corresponding demand notices issued to it

by the Quilon Municipality. Here again petitioner-bank is a corresponding new bank and the assessment is on the basis that the petitioner-bank is a

company. The period involved is second half of 1975-76. In view of what is stated above, the assessment has to be limited to Rs. 275/-the

maximum tax payable by a person. The judgment under appeal proceeds only on the basis that the municipality can competently assess profession

tax at a rate higher than that stated in Art. 276(2) of the Constitution and does not advert to the question as to whether the assessee-bank is a

''person'' or a ''company'', presumably because, no such question was raised before the learned single Judge. However, we allow this appeal and

in reversal of the said decision, quash Exts. P-1 bill and P-2 demand notice issued pursuant to Ext P-1 bill. We direct the 1st respondent to

recompute the profession-tax-liability of the appellant bank for the above said period in the light of what we have said earlier in this judgment.

30. This writ appeal is disposed of at above stated. The parties shall suffer their costs throughout.

31. A. S. 69 of 1979: The plaintiff-appellant. Syndicate Bank, is a corresponding new bank. The Kottayam Municipality assessed this bank to a

profession tax of Rs. 8,801/-for the first half of-1975-76 and Rs. 9,026/-for the second half of that year as per Exhibits A-1 and A-4 respectively.

The appellant has paid Rs. 275/- towards Ext. A-4 assessment. As per Ext. A-12 demand notice the respondents required the appellant-bank to

pay the balance amount of Rs. 17,552/- and the notice fee of Re. 0.50. The plaintiff instituted the suit for injunction restraining the respondents

from assessing the plain tiff-appellant-bank as a company and from recovering the sum demanded as per Ext. P-12 from the bank.

32. The lower Court held that the appellant-Bank is liable to be assessed as a company and so dismissed the suit. In view of what we said earlier

in this judgment, the finding of the lower Court as aforesaid cannot be sustained and has to be vacated. We do so. Consequently the judgment and

decree of the lower Court is set aside and the suit is decreed granting an injunction restraining the defendants-respondents from recovering any

amount from the appellant-bank as profession tax for 1975-76 in excess of Rs. 275/- payable by it as a ''person'' towards Ext. A-1 assessment.

We also hold that the appellant bank cannot be assessed to profession tax on the basis that it is a ''company'' as defined in Section 3(9) of the

Kerala Act corresponding to Section 3(8) of the Travancore Act and respondents are hereby injuncted from assessing the appellant bank to

profession tax on that basis.

33. This appeal is allowed to the above extent. In the circumstances of the case the parties shall suffer their costs throughout.

34. A. S. 77 of 1980. This case stands on a different footing. The plaintiff-appellant is the trustee of the Parthas Trusts. The appellant instituted the

suit for permanent injunction restraining the Kottayam Municipality from realising profession tax from the plaintiff for the year 1974-75 based on

the "present assessment", i.e. at Rs. 565/- for each half year. There is neither pleading nor issue as to whether the plaintiff is liable to be assessed

as a "company" as defined in Section 3(8) of the Travancore Act. However the suit instituted in the Munsiff"s Court was transferred to the

Principal Court and was tried jointly with O. S. 326 of 1976 on its file from which arises A. S. 69 of 1979 which we have just disposed of. On

behalf of the plaintiff-appellant the abovesaid question, viz., as to whether it is a company u/s 3(8) of the Travancore Act. appears to have been

taken for the first time at the time of arguments. The lower Court repelled that contention holding that ""a trust will also be included in the category

of "an association carrying on business"".

35. It has to be mentioned that neither party to the suit adduced any evidence in the case; not even the Trust-deed was in evidence. In the absence

of any pleading in that behalf and of an issue raised on such pleadings, the finding as aforesaid was, in our view, not called for, and this is

particularly so in the absence of any evidence in the case. We have earlier indicated that the question involved is not a pure question of law that can

be answered without reference to the fact and circumstances of a case. We, therefore, vacate that finding.

36. The only point taken before the lower Court by the plaintiff-appellant is that the Kottayam Municipality was not collecting half yearly

profession tax at rates higher than Rs. 275/- per half year according to the provisions contained in the proviso to R. 16 (1) in Schedule II of the

Travancore Act where the business carried on is textile-business. This contention was overruled and rightly so, by the lower Court. The lower

Court therefore dismissed the suit.

37. No grounds exist to interfere with the decision of the lower Court except to the extent of, as already done, vacating the uncalled for finding that

the plaintiff is a company falling u/s 3(8) of the Travancore Act, for the reason that it is "an association currying on business". Since we have

vacated this finding, it is made clear that the plaintiff-appellant shall be free to raise this question in any subsequent litigation and that neither our

decision nor the lower Court''s decision shall conclude the parties on the above question.

We dismiss A.S. 77 of 1980 but without any order as regards costs.