

**(1981) 04 BOM CK 0053**

**Bombay High Court**

**Case No:** Writ Petition No. 881 of 1980

Maharashtra State Co-operative  
Land Development Bank Ltd. and  
Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision:** April 10, 1981

**Citation:** AIR 1982 Bom 199 : (1981) 83 BOMLR 284

**Hon'ble Judges:** V.S. Deshpande, C.J; Sujata V. Manohar, J

**Bench:** Division Bench

**Advocate:** B.R. Naik and V.R. Naik, for the Appellant; C.J. Sawant, Addl. Govt. Pleader and D.P. Hedge, Asst. Govt. Pleader, for the Respondent

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### **Judgement**

Deshpande, C.J.

Of the two petitioners in this Writ petition, No. 1 is the Maharashtra State Co-operative Land Development Bank Ltd. (Herein - after referred to as the Society) while No. 2 is its Member. Under demand notice dated 12-2-1980 and 3-3-1980 by Respondents Nos. 3 and 2 respectively, the Society is called upon to pay a total sum of Rs. 10 lacs towards its contribution for the years 1977-78 and 1978-79 for "the Co-operative State Cadre Employment Fund" (hereinafter referred to as the Fund) under sub-s. (4) of S. 69A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the Act). The Society is notified by Respondent No. 1 State Government by a notification dated 6-3-1979, as one of the Societies, which in its opinion, derives benefit directly or indirectly from the services of the Co-operative State Cadre of Secretaries, constituted under Sub-s (1) of S. 69A (hereinafter referred to as the Cadre). Under R. 53A of the Maharashtra Co-operative Societies Rules, 1961. (Hereinafter referred to as "the Rules") as amended by the First Amendment of 1979, the liability of the society is determined to be Rs. 5 lacs per year in terms of sub-s (4) of S. 69A. The demand notice cannot be ignored by the society without exposing it to the levy of attachment of the amount by the Registrar under sub-s (5) of S. 69A of the Act. Both the petitioners challenge the validity of this demand in this

petition under Art. 226 of the Constitution .

2. We do not thin it necessary to go into the questions of the vires of S. 69A of the Act and Rr. 53A and 53B of the Rules raised by Dr. Naik, learned Advocate for the petitioner, namely (1) whether S. 69A is violative of Articles 14 and 19 of the Constitution and (2) whether Rr. 53A and 53B are ultra vires of the rule making power of the State Government. In our opinion, other three points raised by Cr. Naik are sufficient to quash the impugned demand notices. The first contention of Dr. Naik is that no liability to contribute towards the Fund arises u/s. 69A(4), inasmuch as, no Fund as such "Co-operative State Cadre Employment Fund" has been in fact established by any Apex Bank as contemplated u/s/, 69A(3) till this day. His second contention is that the contribution cannot be claimed by way of tax for want of legislative competence and it cannot be levied as fee, which levy is conditional on benefit to the payer and the Society does not get any benefit whatsoever from the "Fund" of the "Cadre" for the maintenance of which the Fund is raised. His third contention is that fixation of the liability at Rs. 5 lakhs is arbitrary, irrational and without any basis whatsoever and therefore legally ineffective.

3. It will be convenient to refer to certain indisputable relevant factors, S. 69A of the Act contemplates constitution of a Cadre of Secretaries for the efficient administration of certain resources and other prescribed Science specified in S. 69A(1) under the hypo thesis that improvement in their working would in turn help implementing the projects in the co-operative sector through other societies at higher level. It seeks to provide, for its recruitment and operation, by certain notified Central Societies and maintenance from the Fund to be contributed by the said resource societies and certain other notified societies who would derive benefit therefrom. This S. 69A was introduced in the Act on 19-2-1976 by Maharashtra Amendment Act 36 of 1975 while sub-s. (4) thereof as it not stands was introduced therein on 27-12-1976 by Maharashtra Amendment Act 30 of 1978. The scheme was introduced even earlier and was sought to be implemented by persuading the societies concerned to amend their bye-laws for its enforcement, Supervisory Unions at taluka level were established for this purpose who would recruit personnel for the secretarial work of the societies. A State Codification Fund was established earlier, under the Government Resolution dated 2-8-1974 and managed and operated by a State Level Committee, with a view to improve the tone of the working of the primary co-operative societies of certain categories. A current account in the Maharashtra State Co-operative Bank Ltd, was opened on 14-1-1975 under the name of "The State Level Codification Fund" by a Resolution of the said Committee dated 7-11-1974. The committee was to collect contributions from the Co-operative Institutions and Administrative Funds for its working.

4. Sec. 69A and Rr. 53A and 53B were introduced to accord statutory recognition to this scheme enforced already earlier under the Government Resolution dated 2-8-1974. Sub-s (1) of S. 69A specifies certain categories of primary societies and

provides for the establishment of the Cadre, and recruitment thereof by the notified Central Societies, Sub-s (2) authorises the Central Society to depute such recruited personnel to the societies specified in sub-s (1) and the said societies are required to take them over. Their emoluments however are liable to be paid from the Fund, Sub-sec. (3) provides for the establishment of the "Fund" by an Apex Bank to be so notified, to be utilised for the maintenance of the Cadre, Sub-s (4) enables the State Government to notify the societies which in its opinion are benefited by the Cadre directly or indirectly, and charge them with a statutory liability to make contribution at the rates to be fixed by the State Government by reference to factors enumerated therein. Sub-s (5) provides for the sanction of the enforcement of such dues.

5. By notification dated 6-3-1979, certain societies including the petitioner No. 1 were declared to be beneficiaries of the Fund u/s/. 69A(4) of the Act, R. 53A was inserted on 16-7-1979 by amending the 1961 Rules under the Act, Under R. 53A, the rates of contributions were fixed by reference to the categories of the societies benefited, while R. 53B indicated the mode of payment of such contributions by the societies so declared to be liable. Sub-r (1) of R. 53B of the Rules requires the Apex Society, so notified u/s/. 69A(3) of the Act. To open an account in the name of the "Co-operative State Cadre Employment Fund. Established by it in the Maharashtra State Co-operative Bank, Bombay District Central Co-operative Bank. The other clauses of R.s 53B provide for canalizing of the contributions of the notified societies into the said Fund.

6. Now the first contention of Dr. Naik is that liability to make contribution by any notified society u/s/. 69A(4) does not arise as the Fund itself is not established. No material is placed by the respondents to show if such "Fund" is established at all. Entire reliance was placed at the hearing on the affidavit of one Bhatwadekar filed in this writ petition and Writ Petition No. 181 of 1980. Bhatwadekar is an Officer of the Maharashtra State Co-operative Bank Ltd. The affidavit does show that the Maharashtra State Co-operative Bank Ltd. Is notified as an Apex society by the State Government for this purpose u/s. 69A(3) of the Act on 17-5-1979. The State Level Codification Committee at its meeting held on 13-11-1979 passed a resolution to change the name of the account opened by them on 14-1-1979 in this very Maharashtra State Co-operative Bank Ltd., from "State Codification Fund" to "Co-operative State Cadre Employment Fund" The name of the account has accordingly been changed by the Bank in pursuance of the said resolution. The Maharashtra State Co-operative Bank Ltd, now possesses dual capacity of being a Banker and also supposed opener of the account as an Apex Society. This is liable to add to the complexity of the question, The Bank appears to have conveyed its reluctance to operate as an Apex Society. By a resolution dated 27-2-1980 the Government has now put an end to the State level Codification Committee. We were informed at the Bar that this work now has been entrusted to a Co-operative Society viz. Maharashtra State Level Codification Co-operative Society Ltd. Specially registered for that purpose on 1-1-1981.

7. Shri C. J. Sawant, the learned Additional Government Pleader relies only on these facts to show that the Fund contemplated u/s. 69A(3) has been established by the Government and it gives rise to the liability of the petitioner-Society and other notified societies to make contribution. Now sub-s (3) of S. 69A requires the Apex society to "establush" a Fund, while R. 53B (1) requires such an Apex society to open an account in the name of the Fund. The facts deposed to by the Bhatwadekar do not refer to the Apex society having done anything, after its being so notified on 17-5-1979. For establishing the Fund or opening of any account of the Fund. There is no other material before us to indicate as to in what manner the said Apex Society can be said to have established this Fund and opened the accounts for its purpose and what acts it has performed in this behalf after 17-5-1979.

8. That the Fund was actually established in this connection long back under the Government Resolution dated 2-8-1974 is no answer to the point raised. The Apex Society was obviously not in the picture when actually the Fund was established and an account was obened. A mere change of the name of the account from the "State Cadarisation Fund" to "Co-operative State Cadre Employment fund" by itself does not vest the said Fund in the Apex Society nor does it divest the Codification Committee thereof. The Apex Bank does not get any control over the said Fund. The change of the name of the account by itself does not constitute the change in the ownership of the said money lying in the said account of the Bank or furnish an authority to the Apex Society to withdraw money from the said account of the Fund, which still vests in the State Level Codification Committee. The Committee has opened the the account. It alone can claim to operate if even after the change in its name. What will be the position and what will happen to the authority of the said State level Codification Co,mmittee after the formation of the Maharashtra State Co-operative Codification Society Ltd. With effect from 1-1-1981 is altogether a different point no relevant for the purpose of this case. These facts may at the most go to show that a Fund e.e., "the Co-operative State Cadre Employment Fund" has been established by the State Level Codification Committee. That is a different thing from holding that the Apex Society notified u/s 69A(3) has established the such Fund.

9. The obligation under sub-s (4) of S. 69A. If any, of any notified society is to contribute annually to the said "Fund" and not to any Fund. Dr. Naik and other learned Advocates appearing for the several petitioners in this group of cases appear to us to be right in contending that the Apex Society not having established any such Fund till this date, respondents Nos. 3 and 2 were not competent to call upon the petitioners to make any contribution towards any such non-existing Fund as the petitioners were under no legal obligation to pay such Fund. The demand thus being ill-founded is illegal and ineffective and unenforceable against the petitioners on this ground itself.

10. The second contention as to the absence of any benefit of the Fund to the Society raised by Dr. Naik also appears to be well founded. S. 69A(4) casts statutory obligation in the notified societies to contribute to the Fund, Such impost can be justified either as a tax or a fee. No authority can claim any legal sanction under the Constitution to levy any impost without legislative competence and compliance with basic norms. Shri C. J. Sawant, the learned Additional Government Pleader, appearing for the State did not seek to defend this levy as a tax. According to him, the levy is in the nature of a fee. The legislature no doubt is competent to levy any amount by way of a fee to reimburse the administration of the costs required to meet special services to any class of citizens. It is well settled that legislature can authorise any Government agency to charge fees for certain special services to individuals or class of individuals. The question is, if the society can derive or derives any service or benefit at all in lieu or such contributions.

11. It is true that the State Government has notified the petitioner-society as one of the societies which derives benefit from the State Cadre, directly or indirectly, for the maintenance of which contributions are claimed. The petitioners challenge the correctness of this opinion. The opinion formed by the Government unilaterally by itself cannot be conclusive of the petitioners deriving any such benefit, when the petitioners deny the receipt of any direct or indirect benefit from the Cadre. Dr. Naik emphasised two words - "directly or indirectly" - in the notification and urged that the use of these words displays in application of mind and uncertainty if the contemplated benefit is direct or indirect. There is much substance in this contention. All the learned Advocate urged that indirect benefit cannot furnish basis for any levy of fees. It is not necessary to decide in this case if indirect benefit can ever justify the levy of the fees and if proof of direct benefit is indispensable for this purpose, Even if it is assumed that indirect benefit also can justify the levy, it is still necessary to know what such indirect benefit is and what correlation between the contributors and the services claimed to have been rendered in fact exists, Without the existence of such relationship, the levy is liable to be struck down as being legally ineffective.

12. Now under sub-s. (3) of S. 69A, the Fund is to be "utilised for meeting the expenses on the salaries, allowances and other emoluments to be paid to the persons appointed to the Co-operative State Cadre and the other expenditure relating to the Cadre". The correlation must be shown between the services rendered by the Cadre for the maintenance of which the Fund is earmarked, and the payer the petitioner-Society by reference to its business activities. Sub-s. (1) of S. 69A contemplates constitution of the Co-operative State Cadre of Secretaries for administering (1) primary agricultural credit societies, (2) multipurpose co-operative societies and (3) service co-operative. The benefit of this Cadre is intended also to be extended to some other classes of societies provided the same are so prescribed, The Cadre is contemplated to be operated and managed by the "Central Societies" to be so notified by the State Government as detailed to sub-s (2) of S. 69A.

13. Admittedly the petitioner-Society is not one of the three societies specified in S. 69A(1) nor the petitioner Society herein is shown to have been so "prescribed by any notification" for whose administration and management the "Cadre" is established. Admittedly no person is deputed or even contemplated to be deputed or even contemplated to be deputed from the rank of the Cadre to the societies notified u/s. 69A(4) including the petitioner-Society. If this be the factual position, the petitioners cannot be said to be the beneficiary of the Cadre and consequently of the fund and the opinion formed by the Government to that effect cannot but be held, at any rate prima facie, to be ill founded.

14. Shri C, J, Sawant drew our attention firstly to S. 111 of the Act, enumerating the purpose for which the society i.e. the Petitioner-Bank is established. He also drew our attention to certain passages from the affidavit of Koranne, an Officer in the Agriculture and Co-operation Department, filed by the State in defence of the levy of contribution as fees, to show how the Fund is intended to maintain the Cadre and how services of the Secretaries deputed from the Cadre to the society specified in S. 69A(1) result in the efficient working of the said societies and how improvement in their working ultimately improves the financial prospects of the societies notified u/s/ 69A(4) and thereby benefit them. The deponent makes a distinction between long term loans advanced by the petitioner society to the agriculturists for "land improvement and production purposes" such as "sinking of wells, installation of oil engines and electric motors, purchase of agricultural implements, lift irrigation schemes and so on" and the short terms loans or production loans advanced to them by the primary credit co-operative societies for carrying on the seasonal operations in the lands, According to the deponent, the agriculturists can exploit to the maximum and derive full advantage and benefit of the assets created from out of the loan granted by the petitioner Society, only, if they are assured of adequate and timely supply of "production credit" for seasonal agricultural operations like purchase of seeds, fertilizers, pesticides, weeding etc, by the primary credit co-operative societies the Cadre is established Thus, the Cadre is alleged to be benefiting to the primary credit co-operative societies and the credit advanced by them to the agriculturists is shown to be beneficial to the petitioner-society by making loans advanced by them more productive and ensuring repayment of loans, According to the petitioner -society by making loans advanced by them more productive and ensuring repayment of loans, According to the deponent. "All this results in ensuring that the agriculturists are assured of adequate and timely supply of production credit, without which not only the seasonal agricultural operations would suffer, but the repayment of their instalment of long term loan granted, by the petitioner could also be jeopardised."

15. To sum up the case of the State, the efficient management of such primary credit co-operative societies by the Cadre Secretaries enables the agriculturists to get short term loans and consequently better yields from the land and to exploit the long term loans for improvement of the land and its production capacity and their

paying capacity ensuring the refund of the instalments of the petitioner-society is claimed to have been indirectly benefited from the Cadre for the maintenance of which the petitioner-society is required to contribute in terms of sub-s. (4) of S. S. 69A.

16. In support of his contention that even such indirect benefits can justify the levy of fees Shri C. J. Sawant drew our attention to the judgment of the Supreme Court in [Kewal Krishan Puri and Others Vs. State of Punjab and Another](#), and the other cases referred to therein. Dr. Naik. Shri M.V. Paranjape, Shri Rana, Shri A. V. Savant and Shri Sali appearing for the petitioners in these groups of cases also relied on the very same judgment in support of their contention that such remote, it can never furnish legal basis for any such fees.

17. In our opinion, the, contention of Shir C. J. Sawant is misconceived and farfetched. Firstly, the Cadre personnel is also intended to serve three other categories of societies in the multipurpose and service co-operative and other "prescribed societies". No attempt is made to show how large chunk of the Fund spent for their Secretaries can benefit any of the class of notified societies. There is no data to suggest that majority of such personnel is deputed to primary credit societies only. Secondly, though it is true that members of the primary credit co-operative societies and the petitioner-society are agriculturists, there is no basis for assumption that all or any members debtors of the petitioner-society are necessarily the members of primary credit co-operative societies specified in sub-s (1) of S. 69A who alone are the real and direct beneficiaries of this Cadre. Reliance by Shri C. J. Sawant on the averment in cl. (C) of para 3 of Koranne's affidavit saying that. "A substantial majority of them - (agriculturist debtors of the petitioner-society - are also members of the village primary credit societies and hence are receiving benefit of "short term credit" from these societies" is not of much assistance as the factual basis thereof is denied in the counter-affidavit of the petitioner-society. Even if it is assumed that majority of the debtors of the petitioner-society are in fact the members of the primary credit societies and as such loan holders therefrom. It does not follow therefrom, (a) that all of them secure short term loans from the primary society or, (b) that the said loans actually go to improve the productivity of the land owned by them and (c) that as a result of the improvement in the productivity of land, their capacity to pay the loan instalments is actually improved and (d) that but for such loan assistance from the primary resource society the debtors of the petitioner-society could not have paid the instalments in time. The loans are advanced by the petitioner-society to the agriculturists on the security of the lands, and the dues of the societies, such as the petitioners, get priority in term of the ss. 48A and 120 of the Act. Their claims stand on par with Government dues for priority, Thirdly, and more importantly, incorporated societies have independent identity from their members. The supposed benefit to the members cannot be said to be the benefit is the society.

18. To sum up, the Fund is intended to feed the personnel of the Cadre, The Cadre is intended not only for the secretarial work of the primary resource Societies but also for other two categories of the society, payment to whom from the Fund does not at all benefit the Society. Secondly the Cadre may cause benefit to the primary credit societies and not to its share-holders directly. Even If the said members are held to have been benefited indirectly by the Cadre, there is no basis for holding that very same members are members of the petitioner-society. Even if it is assumed that they are such members and consequently the debtors of the petitioner-society are actually benefited indirectly by secretarial services of the primary credit co-operative society, that can never be evidence of the petitioner-society being even indirectly benefited thereby, More importantly, the alleged benefit of improvement in the paying capacity is nothing but a my as loan of the petitioner-society are secured and treated statutorily on par with crown dues for priority. The benefit, apart from being too indirect, is too remote and farfetched and cannot furnish basis for levying any fees and make the petitioner-society liable to contriutions. On the basis of the material placed before us, no other conclusion is possible.

19. The question that fell for consideration in [Kewal Krishan Puri and Others Vs. State of Punjab and Another](#), was whether raising of market fee under the provisions of the Punjab Agricultural Produce Markets Act, 1961 as applicable to the State of Punjab and Haryana was justified in the facts and circumstances arising therein. The Judges proceeded on the basis that what was sought to be exacted from the dealers was not tex but was fee. A fee, according to the learned Judges, is defined to be a charge for a special service rendered to individuals by some governmental agency. Raising of the fees was found by the Supreme Court to have unwarranted and no correlation was found to exist between additional services sought to be rendered in lieu of the enhanced fees and the payer of fees by reference to the transaction of sales in dispute. On exhaustive examination of the case law the learned Judges of the Supreme Court indicated in para 23 at p. 1026 of the report, tests to determine when the fees could be legal and when the same would not. Cl. (3) emphasises now special benefits claimed to have been conferred on the payer of tax must have "a direct, close and reasonable correlation between the licensees and the transactions". Cl. (5) is illustrative of how remote and indirect benefit to the traders can in no sense be a special benefit to them.

20. In our opinion, the following passage from para 46 of the judgment, [Kewal Krishan Puri and Others Vs. State of Punjab and Another](#), is illustrative of how the contention raised be Shri C. J., Sawant before us is thoroughly untenable:

"..... Similarly, as pointed out in the Mining Act and the factory cases charge of fee from the mine owners in the area or the factory owners in the factory for the purpose of developing and protecting the mines and the factories is a service to the owners. If any were to push the example fo a factory beyond the limit of the conception of fee, one could say that the fee charged from the factory owners can



be utilised for pushing and augmenting the output of the raw-materials required in the manufacturing process in the factory, It is also a benefit to the factory. It is reasonably possible to travel as wide as that?".

The learned Judges answered the question in the negative.

21. We do not think it necessary to refer to other cases relied upon by Dr. Naik and other learned Advocates appearing for the petitioners, excepting to the judgment of the Supreme Court in the *India Mica and Micanite Industries Ltd. V. State of Bihar* reported in, (1982) 3 SCC 182 The rule framed by the Board of Revenue under the Bihar and Orissa Excise Act. 1915 required every consumer of denatured spirit to obtain a licence for possession denatured spirit on paying certain amount of fee for such licence. Legality of the fees was challenged in the Supreme Court. The Supreme Court held that, before any levy can be upheld as a fee, a reasonable relationship between the contributions and the services rendered by the Cadre must be proved. In other words, the levy must be proved to be a quid pro quo for the services rendered. The expected relationship is one of a general character and not as of arithmetical exactitude. Services of the Government in the matter of supervising and controlling such intoxicating liquor and supplying the raw materials like molasses and coal to the distilleries at cheap rates for manufacturing the alcohol were relied on to justify the licence fee. The Supreme Court upheld the claim of the petitioners and held that no such relationship existed to justify the validity of the fees.

22. In the facts and circumstances of the case the claim made by the Government stands on a still weaker basis. In terms of sub-s. (3) of Section 69A the Fund to which the contribution is required to be made is intended to be utilised for meeting the expenses on the salaries, allowances and other emoluments of the personnel of the Cadre which is not expected to render any services whatsoever to the petitioner-society. Even if any benefit can be held to have been received by the petitioner society in the manner suggested and discussed earlier, the connection between such contributions and the services rendered by the Cadre through the resource societies to the petitioners is too remote to admit of a finding of the existence of the relationship, which is so essential to justify the validity of the claim according to the ratio of the Supreme Court in [Kewal Krishan Puri and Others Vs. State of Punjab and Another](#),

23. Third contention of Dr. Naik is that, the quantum of liability is arbitrary and without any rational basis. R. 53A seeks to fix the quantum of contribution payable by the petitioner-society towards the Fund at Sr. No. 3 The petitioner-society's contribution is quantified at Rs. 5 lacs per year. The rule itself does not indicate the basis or the method by which the figure of Rs. 5 lacs is arrived at. The way the amount is worked out and fished on the face of it smacks of an arbitrary, irrational and unreasonable approach. It is not possible to know why the amount is fixed at Rs. 5 lacs, not Rs. 10 lacs or Rs. 2 lacs, It was open for the State Government to explain and indicate the basis elaborately. The cl. (D) of para 3 of Koranne's affidavit

indicates that the amount of Rs. 5 lacs no "insignificant considering the fact the during both 1977-78 and 1978-79 the petitioner-society has made a net profit of over Rs. 2 crores each year." In the absence of any explanation for making this profit as the basis for this quantum of Rs. 5 lacs and indication of the nexus between the two, the bald statement cannot be accepted to justify the same. There is no indication as to what would happen if there were losses.

24. Shri C. J. Sawant drew our attention to Koranne's affidavit filed in Writ Petition No. 181 of 1980 and the enclosed statement (Ex. 1) therewith. Exhibit 1 does indicate what the total annual expenditure on the Codification of Secretaries has been from 1977-78 to 1982-89 and how it is sought to be met by collecting contributions from the societies notified to be so beneficiaries thereof. The statement also further indicates as to what amounts are expected, at the rates fixed in the notification dt. 16-7-1979, from each one of the categories of the societies detailed in R. 53A itself. The contribution is levied by reference in the turnover or sale proceeds. Lump sum is levied only for two societies including the petitioner-society. The total expenses seem to have been sought to be apportioned between various categories. There is no explanation for the different basis, rates in different cases, no indication how the quantum of benefit is related to the levy imposed. The lump sum receivable under the said notification from the Maharashtra State Co-operative Bank Ltd. (Petitioner society) amounts to Rs. 20 lacs and Rs. 5 lacs per year respectively. According to Shri C. J. Sawant, the amount of contribution due is fixed by the Government in the light of the estimate of its expenses. The costs incurred have been distributed between different categories of societies by reference to turnover etc, without by reference to turnover only in respect of two societies that a lump sum amount has been fixed.

25. Section 69(4) requires the State Government to take into account, (1) the expenditure referred to in sub-sec. (3) viz. Total emoluments payable to the personnel of the Cadre; (2) the services likely to be rendered, and (3) the financial condition of the societies or other bodies concerned. There is no explanation how all these factors were actually taken into account. It is a moot point whether the capacity to pay towards fees can be a relevant consideration for fixing the quantum thereof. Certain observations in the judgment of the Supreme Court in [Kewal Krishan Puri and Others Vs. State of Punjab and Another](#), do create a doubt in the relevancy of the capacity to pay. Even if this aspect of the matter is ignored, neither the affidavit in the case nor the affidavit in writ petition No. 181 of 1980 nor the material placed before us indicates in what manner the services likely to be rendered by the Cadre to the petitioner-society were measured or taken into account and which financial condition of the petitioner-society was taken into account for the contemplated apportionment of the expenditure amongst several categories of societies. The contention of Dr. Nair, therefore that the fixation of the quantum of contribution towards the fund is arbitrary, irrational and unreasonable, in our opinion deserves to be accepted. The petition deserves to be allowed and the demand notice is liable to be quashed.

26. We accordingly allow the petition make the rule absolute and quash the impugned notice of demand made by the respondents.

27. The petitioners will get their costs from the respondents.

28. The amount deposited by the petitioner-society on 23-4-1980 pursuant to the directions of this Court dt. 11-4-1980 be refunded to the petitioner-society.

29. Shri C. J., Sawant orally applies for leave to appeal to the Supreme Court

P.C. Leave refused

Operation of the Order stayed for four weeks.

30. Petition allowed.