



दिल्ली विधिज्ञ परिषद्
BAR COUNCIL OF DELHI

(Statutory Body Constituted under the Advocates Act, 1961)

2/6, Siri Fort Institutional Area, Khel Gaon Marg, New Delhi-110 049

Ref. No. : 837-839/SF/2020

Dated : 21.07.2020

1. **The Commissioner,
South Delhi Municipal Corporation,**
20th Floor, S.P. Mukherjee Marg,
Civic Centre,
New Delhi.
2. **The Commissioner,
East Delhi Municipal Corporation,**
419, Udyog Sadan, Patparganj Industrial Area,
Patparganj, Delhi - 110092
3. **The Commissioner,
North Delhi Municipal Corporation,**
18th Floor, S.P. Mukherji Marg,
Civic Centre,
New Delhi.

Sub:- Reduction of Use Factor from 4 to 1 for levy of Property Tax in respect of Offices of Advocates in Delhi/New Delhi.

Dear Sirs,

We are a statutory Professional body constituted under Section 3 of the Advocates Act 1961 for discharging functions as stipulated in Section 6 of the Advocate's Act 1961.

2. The preamble of the Advocates Act 1961 shows that it was enacted with a view to amend and consult the law relating to legal petitioners and to provide for the Constitution of State Bar Council and of All India Bar

3. Under Section 3 of the Act Bar Councils are constituted for various states and this council is a State Bar Council for Delhi.

4. Section 6 is a material provision which sets out both objectionable as well as optional functions of every State Council including us which also includes **that this council which safe guard the rights, privileges and interests of Advocates on its role besides to promote the growth of Bar**

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Associates for purposes of effective implementation of welfare schemes referred to in clause (a) of Sub-Section 2 of Section 6, clause (a) of sub-section (2) of Section 7 and **in that capacity we are making this representation to you for reduction of Use Factor for offices of Advocates from 4 to 1.**

5. That Delhi Municipal Corporation Act 1957 was amended vide DMC (Amendment) Act, 2003 by which the Unit Area System was introduced in Delhi for assessment of property taxes. Under the new method of assessment of property tax, Use Factor System was introduced. As far as advocates are concerned, no specific category has been provided and are charged on the basis of rates applicable for commercial properties. We find the following Use Factor:-

- a) For Doctors Clinic – Use Factor 2;
- b) For Advocates Office – Use Factor 4.

This is ultra virus to the Constitution of India in as much as both are discharging their professional duties and therefore the Use Factor should be 1. You are aware that all professionals form one class, but the legal profession has been treated as part of commercial activity, which is illegal, arbitrary and contrary to the law laid down by the Hon'ble Courts.

6. Even Division Bench of the Hon'ble High Court in W.P.(C) No: 4226 of 2017 vide judgment dated 18.1.2018 was pleased to order that the use factor for the office of Bar Council of Delhi would be 1.

7. The SDMC attributes a Use Factor to a building depending on its purpose. The Use Factor varies from 1 (for Residential and Public Purpose) to 10 for Star Hotels (3 star & above), Hoardings and Towers). The Use Factor for Industry, Entertainment, Recreation & Clubs has been specified as 3 and that of Utilities and Business as 2 and 4, respectively. In the broad classification of a 'business building' as keeping of accounts and records or for similar other purposes, inter alia, buildings wherein a non-profit activity is conducted, including discharge of functions stipulated by a statute are prescribed the same factor as one wherein commercial activity is taking place, is applied, thereby attracting the highest Use Factor rate of 4. Non-profit entities and statutory bodies are given certain financial benefits for the functions they perform due to the lack of revenue generated in performing these social activities. Therefore the property tax attributable to a building belonging to



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such entities cannot be the same as that of commercial entities in light of the disparity in the financial power and financial ability to pay the property tax. Instead, a non-profit entity, including one discharging a statutory function, must be assessed as a public utility, attracting a Use Factor of 1, i.e. the lowest Use Factor. This ensures a fair assessment for property tax of buildings which are used for such purposes and are performing necessary social functions and also provides the requisite financial benefits enjoyed by such entities.

8. You would appreciate that no commercial activity is carried on in a Lawyer's office which would be clear from following amongst others Judgments:-

- a) 1984(II) L.L.J.24
Narendra Keshrichand Fuladi and another -Vs- State of Maharashtra.

The Division Bench of the Bombay High Court held as under:-

*"The activity of an advocate carrying on profession of law is radically distinguished from any other commercial activity. **The role of an Advocate in practicing and discharging his duties is participation in administration of justice which is a regal function of the State.***
- (Para 8)

There is a fundamental distinction between a professional activity and an activity of a commercial character and unless the profession carried on by a person also partakes of the character of commercial nature, he cannot fall within the ambit of sec 2(4) of the Act. - (Para 9)

The part a lawyer plays in the administration of justice partakes to some extent or participation in sharing sovereign or regal functions of the State. - (Para 13)

Though the legislature is competent to enlarge the definition of 'Commercial establishment', it could not bring it for equal treatment along with other commercial establishments, an entity which was not a commercial establishment as previously understood by the judicial opinion in the country. - (Para 15)

There are no common properties or characteristics to be found in other commercial establishments and the establishment of a legal practitioner



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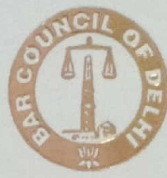
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which have been herded together. There is no rational basis for herding them together and the conclusion that they were brought together arbitrarily is inescapable. The differentia must be intelligible and must be reasonably related to the object of the law. The herding up, which is done either arbitrarily or irrationally would ex facie be unreasonable. The inclusion of the establishment of legal practitioner in the context of the connotation of commercial establishment does not answer the test of reasonableness and the inclusion should be violative of Art. 14 of the Constitution also on the ground of unreasonableness. - (Para 18)

9. Similarly, again another Division Bench of the Bombay High Court in Sakharam Narayan Kherdekar -Vs- City of Nagpur Corporation and others reported as AIR 1964 Bombay 200 had held:-

“A lawyer’s profession is not a kind of profession which can be said to be carried on as profession of commercial nature. It is not a commercial activity and the very nature of the work is such that it is incapable of being of a commercial nature. An activity to be a profession must be one carried on by an individual by his personal skill, intelligence and dependent on individual characteristic. [Paras 29,35]

26. Thus, the very concept of any activity which can justify be called a commercial activity, must imply some investment of capital and the activity, must run the risk of profit or loss. Understood in this sense, **therefore, we are inclined to hold that it is not every establishment in the sense of premises or buildings where business, trade or profession is carried on that is intended to be governed by the Act, but only those buildings though carrying on one or other of these kinds of activities which area of a commercial nature.** We agree with the respondents that the word “establishment” must have been used by the Legislature in the sense of place or premises. But the phraseology in defining “commercial establishment” is far from happy. **We fail to see for instance, how a shop can itself be said to carry any business, trade or profession under the Shops Act if it is to be understood in the sense of premises.** What obviously is meant is that a premises in which any business, trade or profession is carried on and if it is of a commercial nature or requiring commercial skill, then these premises maybe within the meaning of the Act. It is not necessary to notice what a business is or what a trade is, but it is necessary to notice what a ‘profession’ is. In the instant case we are concerned with the profession of an Advocate or a legal practitioner. There is no precise definition of what a profession is , but it is possible to gather what is meant by professional activities from other



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pronouncements. An everyday working definition of what a profession is has been given by Scrutton L.J. in Commissioner of Inland Revenue v. Maxse, (1910) 1 K.B. 647 at p. 657. It is observed at page 657 as follows:-

“I am very reluctant finally to propound a comprehensive definition. A set of facts not present to the mind of the judicial propounder and not raised in the case before him, may immediately arise to confound his proposition. But it seems to me as at present advised that a ‘profession’ in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale of arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word ‘profession’ used to be confined to the three learned professions, the Church, Medicine and law. It has now, I think, a wider meaning.”

(29) Thus it is clear that an activity to be a profession must be one carried on by an individual by his personal skill, intelligence and dependent on individual characteristics, as observed by their Lordships of the Supreme Court in AIR 1962 S.C. 1080 which was a case regarding work of solicitors and also attorneys. It is the personal skill, intelligence, study, integrity which is a core of a professional activity. If that is the test by which one has to be determine whether an activity is a profession as distinguished from trade, or business, then it will be difficult to hold that the profession of law carried on by an Advocate or a legal practitioner in any manner or to any extent partakes of a commercial character or is a commercial activity. As we have held, unless the trade, business or profession carried on also partakes of a commercial nature or venture, the premises in which such activities are carried on will not attract the provisions of the Shops Act. It is therefore necessary to see how a person is qualified to practice his profession of law. It is not everyone who has a right or opportunity to practice law as a profession. It is not a natural or an absolute right in any sense. It is subject to the terms and conditions laid down in a statute which governs the practice and the profession of law. It may be the Legal Practitioner Act or the Bar Councils Act and now, the Advocates Act, in this country. The right is subject to other laws for the time being in force. As observed by this Court in National Union of Commercial Employees v. M.R. Mehar, AIR 1960 Bom. 22 at p. 25 in paragraph 9;



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“The pursuit of a learned profession like that of a solicitor does not require any co-operation of labour. A solicitor offers his own personal services or to put it in different words, is paid for the legal advice and legal assistance given by him personally. His staff cannot do this work or give legal aid to his clients. The money which he earns is for work done by him personally. Its quality depends on his personal qualifications, his brains, his knowledge of law, and the labour put in by him personally. The remuneration earned by him depends upon his personal reputation and the kind and quality of work done by him personally. His staff performs what may be called ministerial functions by typing his opinion, or the documents prepared by him, or by maintaining accounts of his income and expenditure. There is no co-operation between or joint effort of the employer and the employee in his profession nor is such co-operation or combined effort indispensable for carrying on the profession.”

(31) The nature of the law practice, contrasted with other commercial ventures, to which we feel it is not comparable at all, is distinguished by four features, according to Henry S. Drinker in his book “Legal Ethics”, page 5. The primary characteristics which distinguish the legal profession from business are:

(1) a duty of public service in which one may attain the highest eminence without making much money,

(2) a relation as an “officer of Court” to administration of justice involving thorough sincerity, integrity and reliability, (3) a relation to clients in the highest degree fiduciary, and (4) a relation to colleagues at the bar characterized by candour, fairness and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients.

(32) With these and other features, the activity of an Advocate carrying on profession of law is radically distinguished from any other commercial activity. In the same book at page 29, the following observations of Chief Justice Rugg are quoted:

Is incompatible with the maintenance of correct professional standards to employ commercial methods of attracting patronage. Advertising such as that disclosed on this record is commonly designed to stimulate public thought and challenge popular attention to the end that the business of the advertiser may be increased. It has always been regarded as contrary to sound public policy for an attorney at law to foment litigation or to instigate law suits.”

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Paras 34 & 35 repeats here

In the matter of Lalit Bhasin -Vs- Appellate Authority under payment of Gratuity Act, 1972 reported as 2010 (116) DRJ 461 held that office of an Advocate though falls within the definition of profession but is not commercial establishment.

10. Your kind attention is also invited to the decision of Hon'ble Apex Court in the case of Chairman, M.P. State Electricity Board and Others Versus Shiv Narayan and Anr., Civil Appeal No. 1065 of 2000, dated 24.08.2005 wherein it has been categorically held that Legal Profession is not a commercial activity.

11. It is, therefore, requested that the legal profession should be categorically provided for purposes of charge of Property Tax in Use Factor 1.

Thanking you,

Yours faithfully,

(K.C. Mittal)
Chairman
Bar Council of Delhi

Copy to:-

1. **The Chairman, Municipal Valuation Committee**
C/o Commissioner, South Delhi Municipal Corporation,
20th Floor, S.P. Mukherjee Marg,
Civic Centre, New Delhi.
2. **The Mayor, South Delhi Municipal Corporation,**
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Civic Centre, New Delhi.
5. **The Chairman, Standing Committee**
South Delhi Municipal Corporation,
20th Floor, S.P. Mukherjee Marg,
Civic Centre, New Delhi.
6. **The Chairman, Standing Committee**
East Delhi Municipal Corporation,
419, Udyog Sadan, Patparganj Industrial Area,
Patparganj, Delhi - 110092
7. **The Chairman, Standing Committee**
North Delhi Municipal Corporation,
18th Floor, S.P. Mukherji Marg,
Civic Centre, New Delhi.
8. **Hon'ble Chief Minister**
Government of NCT of Delhi
3rd Floor, A-Wing, Delhi Secretariat,
Delhi - 110 002.
9. **Hon'ble the Lieutenant Governor of Delhi**
6, Raj Niwas Marg, Civil Lines,
Delhi - 110 054.
10. **Hon'ble Union Urban Development Minister**
Nirman Bhawan, Maulana Azad Road,
New Delhi - 110 011.