

## BHAIYALAL SHUKLA

v.

## STATE OF MADHYA PRADESH

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH,  
J. C. SHAH and J. R. MUDHOLKAR, JJ.)

*Sales Tax—C. P. and Berar Act extended to Vindhya Pradesh—Validity—C. P. & Berar Sales Tax Act, 1947 (21 of 1947), as extended to Vindhya Pradesh—Part C States (Laws) Act, 1950, s. 2—Government of Part C States Act (49 of 1951), ss. 21, 22—Part C States (Miscellaneous Laws) Repealing Act (66 of 1951)—Vindhya Pradesh Laws (Validating) Act (6 of 1952), s. 7—Vindhya Pradesh Sales Tax Ordinance (2 of 1949)—Constitution of India Art. 14.*

The appellant was doing business of construction as contractor under Public Works Department in Vindhya Pradesh, now Madhya Pradesh. He challenged the levy of Sales Tax on building materials supplied by him for the year 1953-54 to 1958-59. The contention of the Petitioner was that the tax was not leviable in view of the decision of the Supreme Court in *Gannon Dunkerley's case* and *Pandit Banarsi Das's case*. The respondents claimed that the tax was leviable because the case fell within the decision in *Mithan Lal's case*. The Rajpramukh of the United State of Vindhya Pradesh promulgated the Vindhya Pradesh Sales Tax Ordinance 2 of 1949. On Vindhya Pradesh becoming Part C State of India the said Ordinance of Rajpramukh was applied to the whole of it with effect from April 1, 1950, by notification No. 7 of March 28, 1951. Under s. 2 of the Part C States (Laws) Act, 1950, by notification No. S.R.O. 6 dated December 29, 1950, the Central Provinces & Berar Sales Tax Act 1947, was extended to Vindhya Pradesh. The notification also added s. 29 to the Madhya Pradesh Act so extended, by which ordinance 2 of 1949 was repealed. By reason of the decision of this Court in the Delhi Laws Act case the addition of s. 29 was unconstitutional. Parliament then enacted the Part C States (Misc. Laws) Repealing Act (66 of 1951). By s. 2 of the Act the Vindhya Pradesh Sales Tax Ordinance, 1949, was deemed to have been repealed from December 29, 1950. The Vindhya Pradesh Laws (Validity) Act, 1952, also provided and declared that Central Provinces & Berar Sales Tax Act, 1947, which was extended to Vindhya Pradesh under s. 2 of the Part C States Laws Act, 1950, has been and shall be deemed to be in force in Vindhya Pradesh from April 1, 1951. The said C. P. & Berar Sales Tax Act defined contract, goods, sales etc. and by these definition the materials used or supplied by

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a building contractor in the constructions etc. were made liable to Sales Tax in accordance with the schedule rates. The question is, whether C. P. & Berar Sales Tax Act, 1947, can be said to have been extended for the first time by the Vindhya Pradesh legislature in 1952, when it passed the Vindhya Pradesh Laws (Validating) Act, 1952, to the exclusion of the order contained in the notification No. S.R.O. 6 or whether the Act continued to be in force in Vindhya Pradesh even before and all that the Vindhya Pradesh Act did as to remove any doubts about its validity.

The rival contentions of the appellant and the respondents are reduced to the proposition that if the State Legislature of Vindhya Pradesh extended the Central Province and Berar Sales Tax Act, the extended Act would suffer from disability pointed out in *Gannon Dunkerley's case*, but if the said Act was extended by the notification under Part C States (Laws) Act, 1950, then it must be treated as incorporated in the Act and to have the authority of Parliament which, in relation to Part C States, had no limitation whatever.

*Held*, that the extended law in the C. P. & Berar Sales Tax Act, 1947, did not depend on the repeal of the earlier law for its validity. It would have been operative, even if the earlier law was not repealed, but the earlier law was in fact repealed from December 29, 1950, and no question of conflict between the new and the old law ever arose.

*Held*, further, that the Vindhya Pradesh Amending Act made only verbal changes, but did not alter the structure of the tax. No doubt, that Act contained certain provisions under which sales of building materials are taxable, and if the authority to tax the so-called sales emanated from a State Legislature, then the law would fail. The law was first extended to the Vindhya Pradesh by the Central Government acting under the authority of Parliament legislating for a Part C State. Parliament and the Central Government were not subject to the disabilities pointed out in *Gannon Dunkerley's case*, and the matter was covered by *Mithan Lal's case*. Even if the notification S.R.O. No. 6 failed to repeal Ordinance 2 of 1949 Parliament by its own law effaced that ordinance in Vindhya Pradesh from December 29, 1950, and enacted that that Ordinance shall be deemed to be repealed from that day. The Ordinance 2 of 1949 did not continue in Vindhya Pradesh down to January 8, 1953, because by fiction the Ordinance was repealed from December 29, 1950.

*Held*, also, that the laws in different portions of new State of Madhya Pradesh were enacted by different legislatures and under s. 119 of the States Reorganisation Act, all

laws in force in a state were to continue until repealed or altered by the appropriate Legislature. The different sales-tax laws in different parts of Madhya Pradesh are valid on the ground that the differentiation arises from historical reasons, and a geographical classification based on historical reasons is not affected by Art. 14 of the Constitution.

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*State of Madras v. Gannon Dunkerley & Co.* [1959] S.C.R. 379, *Pandit Banarsidas v. State of Madhya Pradesh*, [1959] S.C.R. 427, *Mithan Lal v. State of Delhi*, [1959] S.C.R. 445, *In re the Delhi Laws Act, 1912*, [1951] S.C.R. 747, *Gannon Dunkerley v. State of Madras*, [1954] 5 S.T.C. 216, *Behram Khurshed Pesikaka v. The State of Bombay*, [1955] 1 S.C.R. 613, *Deepchand v. State of Uttar Pradesh*, [1959] Supp. 2 S.C.R. 8, *John M. Wilkerson v. Charles A. Rahrer*, (1891) 140 U. S. 545, *M. K. Prihi Rajji v. State of Rajasthan* C. A. No. 327/56 decided on 2-11-60 and *State of Madhya Pradesh v. The Gwalior Sugar Co. Ltd.* C. A. Nos. 98 and 99 of 1957 decided on 30-11-1960, referred to.

ORIGINAL JURISDICTION : Petitions Nos. 110 to 115 of 1960.

(Under Article 32 of the Constitution of India for enforcement of Fundamental Rights)

*A. V. Viswanatha Sastri, R. K. Garg, D. P. Singh, S. C. Aggarwal and M. K. Ramamurthi*, for the Petitioner.

*B. Sen, B. K. B. Naidu and I. N. Shroff*, for the Respondents.

1961. December 21. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—These six petitions under Art. 32 of the Constitution have been filed by one Bhaiyalal Shukla, who was doing business of construction of buildings, roads, bridges etc. as contractor for the Public Works Department in Rewa Circle of the former Vindhya Pradesh State, now a part of the State of Madhya Pradesh. By these petitions, he challenges the levy of sales tax on building materials supplied by him in the construction of buildings, roads and bridges for the years, 1953-54 to 1958-59. For the first year in question, sales tax amounting to Rs. 1,840-5-0 has

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already been charged and paid. He seeks refund of this amount. For the remaining years except the last two, proceedings for assessment have been completed, but the amounts have not been paid. For the remaining two years, proceedings are pending for assessment of the tax. The respondents in the case are the State of Madhya Pradesh, which stands substituted for the State of Vindhya Pradesh, and diverse officers connected with the assessment and levy of the tax. The contention of the petitioner is that the tax is not leviable in view of the decisions of this Court in two cases reported in *The State of Madras v. Gannon Dunkerley and Co., (Madras) Ltd.*, <sup>(1)</sup> and *Pandit Banarsidas v. The State of Madhya Pradesh* <sup>(2)</sup>. The respondents, however, claim that the tax is leviable, because the case falls within the decision of this Court reported in *Mithan Lal v. The State of Delhi* <sup>(3)</sup>.

The United State of Vindhya Pradesh was formed by the Rulers of the States in Baghelkhand and Bundhelkhand, who agreed to unite into a common State, with the Maharaja of Rewa as the Rajpramukh. By the Covenant which was entered into by them at that time, it was provided that until a Constitution for the United State was formed, the legislative authority of the United State would vest in the Rajpramukh, and he was authorised to make and promulgate Ordinances for the peace and good government of the United State or any part thereof, and any Ordinance made by him had the force of an Act passed by the legislature of the United State.

The Rajpramukh, in exercise of his powers drawn from the Covenant, promulgated the Vindhya Pradesh Sales Tax Ordinance 2 of 1949 for the levy of a tax on the sale of goods in Vindhya Pradesh. On the inauguration of the present Constitution of

(1) [1959] S. C. R. 379.

(2) [1959] S. C. R. 427.

(3) [1959] S. C. R. 445.

India, Vindhya Pradesh became, at first, a part B State but later by the Constitution (Amendment of the First and Fourth Schedules) Order, 1950, it was transferred from Part B to Part C of the Constitution. The Ordinance of the Rajpramukh was applied to the whole of Vindhya Pradesh with effect from April 1, 1950 by Notification No. 7 of March 28, 1950 by the Chief Commissioner, Vindhya Pradesh, acting under s. 1(2) of the Ordinance.

Parliament then passed the Part C States (Laws) Act, 1950. Section 2 of that Act provided :

*“Power to extend enactments to certain Part C States :—*The Central Government may, by notification in the Official Gazette extend to any Part C State.....or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State at the date of the notification and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State.”

In exercise of the power conferred by the above section, the Central Government by Notification No. S.R.O. 6 dated December 29, 1950, extended to the State of Vindhya Pradesh the Central Provinces and Berar Sales Tax Act, 1947 (21 of 1947) as in force for the time being in the State of Madhya Pradesh, subject to certain modifications necessitated by the application of the Act to this new area. By the same Notification, a new section was added to the Madhya Pradesh Act, which read as follows :

*“29. Repeal and Saving :* The Vindhya Pradesh Sales Tax Ordinance 2 of 1949 is hereby repealed, provided that.....,”  
and here follow certain provisions saving the previous operation of the Ordinance.

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On March 20, 1951, the Central Government issued Notification No. 52/ECON. in exercise of the powers conferred by sub-s. (3) of s. 1 of the Central Provinces and Berar Sales Tax Act, 1947, as extended to the State of Vindhya Pradesh by Notification No. S.R.O. 6, ordering that from April 1, 1951 the extended Act would come into force in the State of Vindhya Pradesh. On May 23, 1951, this Court rendered its judgment in *In re the Delhi Laws Act 1912*(<sup>1</sup>). It was held by majority by this Court that s. 2 of the Part C States (Laws) Act, 1950 was *intra vires*, except for the concluding sentence, "provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State", inasmuch as it was *ultra vires* the Indian Parliament.

Parliament then passed the Government of Part C States Act, 1951 (49 of 1951) on September 6, 1951. Under that Act, Legislative Assemblies were set up, and under s. 21, they were invested, subject to certain limitations, with Powers of legislation with respect to any of the matters enumerated in the State List or in the Concurrent List. Section 22 of that Act provided :

"If any provision of a law made by the Legislative Assembly of a State is repugnant to any provision of a law made by Parliament, then the law made by Parliament whether passed before or after the law made by the Legislative Assembly of the State, shall prevail and the law made by the Legislative Assembly of the State shall, to the extent of the repugnancy, be void.

*Explanation* : For the purposes of this section, the expression 'law made by Parliament' shall not include any law which provides

(1) [1951] S. C. R. 747.

for the extension to the State of any law in force in any other part of the territory of India."

In view of the decision of this Court in the *Delhi Laws Act* case<sup>(1)</sup>, the Part C States (Miscellaneous Law) Repealing Act, 1951 (66 of 1951) was enacted by Parliament on October 31, 1951. By s. 2 of that Act, laws described in Column 2 of its Schedule were repealed or were deemed to have been repealed with effect from the dates specified in the corresponding entry in column 3 of that Schedule. In the Schedule, the Vindhya Pradesh Sales Tax Ordinance, 1949 (2 of 1949) was repealed from December 29, 1950. The Vindhya Pradesh Legislative Assembly, which was set up, then passed the Vindhya Pradesh Laws (Validating) Act, 1952 (6 of 1952). By that Act, which was to extend to the whole of Vindhya Pradesh and to come into force on January 8, 1953, it was provided as follows :

"2. For the removal of all doubts it is hereby declared that.....Central Provinces and Berar Sales Tax Act, 1947 as extended to Vindhya Pradesh under section 2 of the Part C States Laws Act, 1950 (has been) and shall be deemed to be in force in Vindhya Pradesh from April 1, 1951.

7. *Repeal and savings* :—As from the dates of the actual enforcement of the Acts specified in section 2 of this Act the corresponding laws in force in Vindhya Pradesh immediately before the said dates shall be deemed to have been repealed without prejudice to anything done or suffered thereunder or any right, privilege, obligation or liability acquired, accrued or incurred thereunder before the aforesaid dates."

Section 2 of the Central Provinces and Berar Sales Tax Act, 1947, which was extended to

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Vindhya Pradesh, defined "contract" to mean any agreement for the carrying out for cash or deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property, and further defined "goods" to mean all kinds of property including all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property, and finally defined "sale" as including a transfer of property in goods made in the course of the execution of a contract. By these definitions, the materials used or supplied by a building contractor in the construction of buildings, roads, bridges, etc. were made liable to sales tax in accordance with a schedule of rates to which reference seems unnecessary.

The legality of these and similar provisions of law purporting to impose sales tax on building materials in State Acts came up for consideration before High Courts in India, and two well-defined views were expressed, one holding that the power to disentangle in a building contract the sale of materials from the execution of works with a view to taxing such a sale, was not beyond the legislative power of the States acting under Entry 48, List II, Seventh Schedule of the Government of India Act, 1935, corresponding to Entry 54 of the like List in the Constitution. It was held in those cases that a building contract, though entire, involved labour *plus* materials and in respect of the materials there was a sale involving transfer of property for consideration, and that the legislature had the power to frame a definition of "sale" to separate the two. The other view was that building contracts were entire, and that there was no sale of goods as contemplated by the Indian Sale of Goods Act, which was the sense in which the Entry was framed, a sense which had a well-recognised legal import.



This Court in *Gannon Dunkerley's* case <sup>(1)</sup> approved the latter view, which is found in the decision of the Madras High Court in *sub nom Gannon Dunkerley v. State of Madras* <sup>(2)</sup>, and disapproved the contrary view. It was pointed out that though in a popular sense there was a sale of the materials, there was none in the sense in which the expression "sale of goods" is used in the Indian Sale of Goods Act, since there was no agreement to sell or sale of materials as such, nor did the property pass therein as movables. In *Pandit Banarsi Das's* case <sup>(3)</sup>, which was a case from the State of Madhya Pradesh and which was heard simultaneously, it was held that if the parties entered into distinct and separate contracts, one for transfer of materials for money consideration and the other, for payment of remuneration for services or works done, then there was a sale within the meaning of the Sale of Goods Act and the levy of tax was valid; but that if the contract was an entire one, the levy was without competence. The sections of the Central Provinces and Berar Sales Tax Act making such a division and taxing the so-called sales of materials were declared to be beyond the powers of the State Legislature.

The petitioner contends that the impugned sections of the Central Provinces and Berar Sales Tax Act, as applied to Vindhya Pradesh, fell within these two rulings, and must also be declared *ultra vires* the Vindhya Pradesh State Legislature, when the latter enacted the Vindhya Pradesh Laws (Validating) Act, 1952.

As against this, the respondents contend that the Notification S.R.O. No. 6, which added s. 29 repealing the Vindhya Pradesh Sales Tax Ordinance 2 of 1949, the Part C States (Miscellaneous Laws) Repealing Act, 1951 and the Vindhya Pradesh Laws (Validating) Act, 1952 all concurred in repealing

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(1) [1959] S. C. R. 379.

(2) [1954] 5 S. T. C. 216

(3) [1959] S. C. R. 427.

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Ordinance 2 of 1949 from December 29, 1950, but left intact the operation of the Central Provinces and Berar Sales Tax Act as extended to Vindhya Pradesh by S. R. O. No. 6 of 1950. The Vindhya Pradesh Laws (Validating) Act, 1952 merely removed the doubts by stating again that the Central Provinces and Berar Sales Tax Act had been and "shall be deemed to be in force in Vindhya Pradesh from April 1, 1951", but did not re-enact that Act. According to the respondents, the Central Provinces and Berar Sales Tax Act was in force in Vindhya Pradesh as a result of its extension by Notification S. R. O. 6 and Notification No. 52 (Eoon), the repeal of Ordinance 2 of 1949 being achieved by the Part C States (Miscellaneous Laws) Repealing Act, 1951 from December 29, 1950. The respondents, therefore, seek to uphold the impugned provisions on the basis of the ruling of this Court in *Mithan Lal's* case<sup>(1)</sup>, where it was pointed out that whatever might be said of the State Legislatures operating under List II did not hold good in the case of Parliament which derived its powers in relation to legislation in Part C States, not only from all the Lists but also from the residuary powers of taxation mentioned in Art. 248(2). It was also held that s. 2 of the Part C States (Laws) Act, 1950 was not repugnant to Art. 248(2), that the extended law became incorporated by reference in the Part C States (Laws) Act, and that the tax was thus one imposed by Parliament itself. The respondents, therefore, contend that, as held in *Mithan Lal's* case<sup>(1)</sup> when parliament enacted the Part C States (Laws) Act, 1950 and conferred power on the Central Government to extend any Act of a Part A State to any Part C State, that power of extension carried with it the plenary powers of Parliament, and even though the law so extended might have been outside the competence of the State Legislature which enacted it, when extended under the

(1) [1959] S. C. R. 445.

authority of Parliament was a valid piece of law in a Part C State.

The rival contentions may be reduced to the proposition that if the State Legislature of Vindhya Pradesh extended the Central Provinces and Berar Sales Tax Act, then the extended Act would suffer from the disability pointed out in *Gannon Dunkerley's case* <sup>(1)</sup>, but if the Central Provinces and Berar Act was extended by the Notification under the Part C States (Laws) Act, 1950, then it must be treated as incorporated in that Act and to have the authority of Parliament which, in relation to Part C States, had no limitations whatever. We have, therefore, to see whether the Central Provinces and Berar Sales Tax Act, 1947 can be said to have been extended for the first time by the Vindhya Pradesh Legislature in 1952 when it passed the Vindhya Pradesh Laws (Validating) Act, 1952 to the exclusion of the order contained in the Notification No. S. R. O. 6, or whether the Act continued to be in force in Vindhya Pradesh even before, and all that the Vindhya Pradesh Act did was to remove any doubts about its validity.

The contention on behalf of the petitioner is that the Notification dated December 29, 1950 was invalid in its latter part, as decided by this Court in the *Delhi Laws Act case* <sup>(2)</sup>. That portion dealt with the repeal of Ordinance 2 of 1949, and if the Notification was invalid in that part, then the Central Provinces and Berar Sales Tax Act, which was extended by the opening part, never came into force. Mr. Viswanatha Sastri contended that the Notification must be looked at compendiously, and that it was impossible to think that the Central Government would have extended the Central Provinces and Berar Sales Tax Act, if the earlier Ordinance still continued to operate. He relied in this connection upon the observations of this Court in *Pesikaka's case* <sup>(3)</sup> to urge that the

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(1) [1959] S. C. R. 379.

(2) [1951] S. C. R. 747.

(3) [1955] 1 S. C. R. 613, 638.

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Notification which was beyond the powers of the Central Government in its latter part must be regarded as a nullity, and contended that if the invalid portion of the Notification was fundamental to the operation of the valid, then the valid portion also must equally fail because it could not have been intended that two laws on the same topic were to operate simultaneously in Vindhya Pradesh. According to him, the extension of the Central Provinces and Berar Act could not and would not have been made, if the Ordinance had not been first repealed. Section 29 which was added, though composed of two parts, was, according to him, really a part of a single scheme and the repeal of the Ordinance and the extension of the Central Provinces and Berar Act could stand or fall together, and since the Ordinance was never validly repealed, it continued to operate in Vindhya Pradesh till its repeal on October 31, 1951, by the Part C States (Miscellaneous Laws) Repealing Act, 1951, and when the Act repealed it from December 29, 1950, the effect was that there was no sales tax law in operation in Vindhya Pradesh, because the Part C States (Miscellaneous Laws) Repealing Act, 1951, did not enact or extend any law on the subject of sales tax in or to Vindhya Pradesh. According to him, till the enactment of the Vindhya Pradesh Laws (Validating) Act 6 of 1952 on January, 8, 1953 there was no law imposing sales tax in Vindhya Pradesh, and the law was then made by the Legislature of Vindhya Pradesh by extending the Central Provinces and Berar Sales Tax Act from April 1, 1951. He therefore, contended that since the powers of the Vindhya Pradesh Legislature did not include the power of imposing sales tax on building materials, this Act of the Vindhya Pradesh Legislature, if it sought to impose sales tax on building materials, fell within the ruling in *Gannon Dunkerley's case* (1) and must be declared as of no effect. He also referred to Act 9 of 1953

(1) [1959] S. C. R. 379.

passed by the Vindhya Pradesh State Legislature, by which the Act was further amended, and stated that the extended Act, as amended, owed its existence neither to Parliament nor to the Central Government acting under the Part C States (Laws) Act but to the Vindhya Pradesh Laws (Validating) Act, 1952 (6 of 1952) and the Vindhya Pradesh Amendment Act, 1953 (9 of 1953).

There is a fundamental fallacy involved in this reasoning. We are considering the applicability of the Central Provinces and Berar Sales Tax Act as extended to Vindhya Pradesh. The Vindhya Pradesh Amending Act made only verbal changes, but did not alter the structure of the tax. No doubt, that Act, contained certain provisions under which sales of building materials are taxable, and if the authority to tax the so-called sales emanated from a State Legislature, then the law would fail. But we have to remember, in this connection, that the law was first extended to Vindhya Pradesh by the Central Government acting under the authority of Parliament legislating for a Part C State. Parliament and the Central Government were not subject to the disabilities pointed out in *Gannon Dunkerley's* case <sup>(1)</sup>, and the matter was covered by the decision of this Court in *Mithan Lal's* case <sup>(2)</sup>. Even if the Notification, S. R. O. No. 6, failed to repeal Ordinance 2 of 1949, Parliament by its own law effaced that Ordinance in Vindhya Pradesh from December 29, 1950, and enacted that the Ordinance shall be deemed to be repealed from that day. After the passing of the Repealing Act by parliament, it is impossible to argue that Ordinance 2 of 1949 continued in Vindhya Pradesh down to January 8, 1953, because by fiction the Ordinance was repealed from December 29, 1950. Parliamentary legislation, therefore, came to the rescue, so to speak, of the Notification by making room for the extension of the Central Provinces and

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Berar Act by repealing Ordinance 2 of 1949 which the Notification *proprio vigore* was unable to achieve as laid down in the *Delhi Laws Act case*(<sup>1</sup>). The Notification of the Central Government (S. R. O. No. 6) and Act 66 of 1951, therefore concurred in removing the Ordinance on December 29, 1950 and in extending the Central Provinces and Berar Sales Tax Act in its place on the same date.

Mr. Viswanatha Sastri argued, on the strength of ruling of this Court in *Deepchand v. State of Uttar Pradesh* (<sup>2</sup>) that the validity of a law must be judged as on the date on which it was passed, and if the law was invalid on that date, then the law must be deemed not to have existed at all, unless it was later re-enacted. The passage relied upon is as follows :

"The validity of a statute is to be tested by the constitutional power of a legislature at the time of its enactment by that legislature and, if thus tested, it is beyond the legislative power, it is not rendered valid without re-enactment if later, by constitutional amendment, the necessary legislative power is granted. An after acquired power cannot, *ex proprio vigore*, validate a statute void when enacted." (p. 24).

This argument would be applicable if we were to consider that Notification No. S. R. O. 6 in isolation, and the question was one of validation of that Notification. The Notification is being questioned, because it sought to repeal Ordinance 2 of 1949, which it could not do. But, today we are not in a position to say that Ordinance 2 of 1949 continued in Vindhya Pradesh, because Parliament by the Part C States (Miscellaneous Laws) Repealing Act, 1951 has enacted that the said Ordinance must be deemed to have been repealed from December 29, 1950. Indeed, in the ruling

(1) [1951] S.C.R. 747.

(2) [1959] Supp. 2 S.C.R. 8, 24.

of this Court at the same page are cited passages from Willoughby on Constitution of the United States (2nd Edn.) Vol. 1, p. 10 based on the decision in *John M. Wilkerson v. Charles A. Rahrer* <sup>(1)</sup> to the effect that if the cause of the unconstitutionality is removed then the law does not need to be re-enacted. The facts of this case are entirely different from those in *Deepchand's* case <sup>(2)</sup>. The extended law did not depend on the repeal of the earlier law for its validity. It would have been operative, even if the earlier law was not repealed; but the earlier law was, in fact, repealed from December, 29, 1950, and no question of conflict between the new and the old law ever arose. Parliament by repealing the Ordinance rendered the ineffective portion of the Notification a mere surplusage. The necessary result thus was that its operative part survived and the Central Provinces and Berar Sales Tax Act, 1947 was validly extended to Vindhya Pradesh, and was valid law as laid down in *Mithanlal's* case <sup>(3)</sup>. It did not suffer from the defects pointed out by the this Court in *Gannon Dunkerley's* case <sup>(4)</sup>, as it was not enacted or extended by the State Legislature.

It remains to consider the last argument on this point, and it is that the Central Provinces and Berar Sales Tax Act was re-extended to Vindhya Pradesh by Act 6 of 1952, and thus owed its existence to a law made by a State Legislature which was incompetent to enact a law that building materials in a works contract, which was entire, were liable to sales tax. The preamble of the Act shows that it was enacted to remove certain doubts which were entertained as to whether the extended Sales Tax Act became operative only from October 31, 1951 when Act 66 of 1951 was passed, or from an earlier date, viz., April 1, 1951, from which date it was brought into force in

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(1) (1891) 140 U. S. 545; 35 L. Ed. 572. (2) [1959] Supp. 2, S.C.R. 8, 24.

(3) [1959] S. C. R. 445.

(4) [1959] S.C.R. 379.

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Vindhya Pradesh by Notification No. 52 (Econ.), dated March 20, 1951. To remove these doubts, the Vindhya Pradesh Laws (Validating) Act, 1952, enacted with the assent of the President, declared by s. 2 (already quoted) that the Central Provinces and Berar Sales Tax Act had been and "shall be deemed to be in force in Vindhya Pradesh from April 1, 1951." This declaration did not extend *proprio vigore* the Central Provinces and Berar Sales Tax Act, but only declared that it must be deemed to be validly in force from April 1, 1951. Section 7, on which much reliance has been placed, may be quoted again :

*"Repeal and savings :—As from the dates of the actual enforcement of the Acts specified in Section 2 of this Act the corresponding laws in force in Vindhya Pradesh immediately before the said dates shall be deemed to have been repealed without prejudice to anything done or suffered thereunder or any right, privilege, obligation or liability acquired, accrued or incurred thereunder before the aforesaid dates"*

It is said that, if the two sections are read together they mean that the Central Provinces and Berar Sales Tax Act was freshly extended from April 1, 1951 by the Vindhya Pradesh Act and any law made by any authority earlier was freshly repealed to make room for the extension. This argument, in our opinion, is erroneous.

To begin with, the powers of the Vindhya Pradesh Legislature were circumscribed by s. 22 of the Government of part C States Act, 1951, quoted earlier. Under that section, the powers of the State Legislatures did not extend to making laws repugnant to any law made by Parliament. The Explanation defines the expression "law made by Parliament", and excludes a law which provides for the extension to the State of any law in force



in any other part of the territory of India. The Vindhya Pradesh Legislature, however, did not repeal either s. 2 of the Part C States (Laws) Act or the Notification, and all that the Legislature did was to add its own authority by a declaration, to the laws earlier extended. The law was extended first by Notification S.R.O. No. 6 on December 29, 1950, but it was brought into force only by Notification No. 52 (Econ.) dated March 20, 1950 from April 1, 1951. The Notification, S. R. O. No. 6 had substituted for sub-s.(3) of s.1 of the Central Provinces and Berar Sales Tax Act, the following :

“(3) It shall come into force on such date as may be notified by the Central Government in the Official Gazette.”

Till the Notification No. 52 (Econ.) was made, the Act was extended but was not in force in Vindhya Pradesh. There is a difference between the extension of a law subject to its being brought into force latter and its coming into force on a later date. Section 7 of Act 6 of 1952 repealed only the laws in force prior to the date on which the Central Provinces and Berar Sales Tax Act was brought into force. It speaks of “laws in force in Vindhya Pradesh immediately before April 1, 1951”, and the law which was in force immediately before that date was not the Central Provinces and Berar Sales Tax Act which had not been brought into force, but might be Ordinance 2 of 1949, if it had not been successfully repealed earlier. The former Act was extended on December 29, 1950, but was not brought into force till April 1, 1951, and the section speaks of “*laws in force*”. The section, therefore, refers to Ordinance 2 of 1949, which would be in force immediately before April 1, 1951, if not successfully repealed, but not to the Central Provinces and Berar Sales Tax Act which was only extended before that date but had not been brought *into force*. In other words, s. 7 of the Act does no more than repea

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from April 1, 1951 (if repeal was at all necessary) Ordinance 2 of 1949, which might be supposed to have continued as law till October 31, 1951, when it was repealed by Act 66 of 1951. In point of fact and also in law, it was really repealed from December 29, 1950 under the Repealing Act 66 of 1951. The Vindhya Pradesh Act 6 of 1952 cannot, therefore, be said to have enacted for the first time that the Central Provinces and Berar Sales Tax Act shall come into force from April 1, 1951 in Vindhya Pradesh. It only declared what was a legal fact even without this declaration. Nor did the Central Provinces and Berar Sales Tax Act owe its existence to Act 6 of 1952. Act 6 of 1952 only declared what the result of the earlier laws was, and added the authority of the Vindhya Pradesh Legislature to remove doubts and to save the law from any attack on the ground that the wrong Legislature had repealed the Ordinance or extended the Central Provinces and Berar Sales Tax Act. In our opinion, this argument cannot be accepted.

One further argument was advanced to which we have not referred so far, and which may now be noticed. It is that after the reorganisation of the States, Madhya Pradesh has as many as four Sales Tax Acts. It is contended that a person belonging to the area of the former State of Madhya Pradesh is not liable to sales tax on building materials in a works contract under the Central Provinces and Berar Sales Tax Act because of the decision in *Pandit Bumsari Das's* case<sup>(1)</sup>, but another person living in the area forming part of the former Vindhya Pradesh is liable to sales tax under the same Act, as extended to Vindhya Pradesh. This, it is said, is patently contrary to the spirit of the equal protection clause in Art. 14.

The laws in different portions of the new State of Madhya Pradesh were enacted by different Legislatures, and under s.119 of the States Reorganisation

(1) [1959] S.C.R. 427.

Act, all laws in force are to continue until repealed or altered by the appropriate Legislature. We have already held that the sale tax law in Vindhya Pradesh was validly enacted, and it brought its validity with it under s.119 of the States Reorganisation Act, when it became a part of the State of Madhya Pradesh. Thereafter, the different laws in different parts of Madhya Pradesh can be sustained on the ground that the differentiation arises from historical reasons, and a geographical classification based on historical reasons has been upheld by this Court in *M. K. Priithi Rajji v. The State of Rajasthan*(<sup>1</sup>) and again in *The State of Madhya Pradesh v. The Gwalior Sugar Co. Ltd.*(<sup>2</sup>). The latter case is important, because the sugarcane cess levied in the former Gwalior State but not in the rest of Madhya Bharat of which it formed a part, was challenged on the same ground as here, but was upheld as not affected by Art. 14. We, therefore, reject this argument.

In the result, the Writ Petitions fail, and are dismissed; but in the circumstances of the case we make no order about costs.

*Petitions dismissed*

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(1) Civil Appeal No. 327 of 1956 decided on November 2, 1960.

(2) Civil Appeals Nos. 98 and 99 of 1957 decided on November 30, 1960.