1961

July 26

THE INDORE IRON AND STEEL REGISTERED STOCK-HOLDERS' ASSOCIATION

v.

THE STATE OF MADHYA PRADESH AND OTHERS

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, M. HIDAYATULLAH, J. C. SHAH and RAGHUBAR DAYAL, JJ.)

Sales Tax—Commodity declared essential for the life of community—Imposition of tax by State Government under prior enactment—Constitutional validity—Constitution of India, Art. 286 (3)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, ss.2, 3 Madhya Bharat Sales Tax Act, Samvat 2007, s. 5(2).

The constituent members of the appellant Association, who carried on business in iron and steel articles were assessed to sales tax for the years 1953-54 and 1954-55 under a notification dated October 24, 1953, issued by the State of Madhya Bharat under s. 5(2) of the Madhya Bharat Sales Tax Act, Samvat 2007, (Act No. 30 of 1950). The appellant moved the High Court under Art. 226 of the Constitution challenging the validity of the assessment on the ground that the said articles were covered by the declaration made by Parliament by s. 2 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, that iron and steel were essential commodities within the meaning of Art. 286(3) of the Constitution which was operative from August 9, 1952. The High Court found against the appellant.

Held, that even assuming that the words "iron and steel" in Entry 14 of the Schedule to the Act were comprehensive enough to include articles made of iron and steel, that would not necessarily render the notification invalid under Art. 286(3) of the Constitution.

Article 286(3), as it stood before the Constitution (Sixth Amendment) Act, 1956, could be successfully invoked only if three conditions were satisfied,—(1) that the impugned legislation was one by the Legislature of a State, constituted under the Constitution, (2) that it was subsequent to the declaration made by the Parliament as to the essential character of the commodity and (3) that it could be, but was not, reserved for the President's consideration and assent.

It was obvious, therefore, that a subsequent Parliamentary

declaration could not affect the validity of an enactment retrospectively.

Sardar Soma Singh v. *The State of Pepsu and Union of India*, (1954) S. C. R. 955 and *Firm of A. Govrishankar* v. *Sales Tax Officer, Secunderabad*, A. I. R. 1958 S. C. 883, referred to.

Although the Act, under which the impugned notification was made, satisfied the first condition, it did not satisfy the second or the third and, consequently, its validity could not be questioned under Art. 286(3) of the Constitution.

Held, further, that it was apparent from s. 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, that if a law had been passed prior to the commencement of the Act authorising the imposition of a tax, its validity could not be challenged on the ground that the said commodity was subsequently declared by the Act to be essential for the life of the community. The impugned notification and the State Act under which it was made were, therefore, outside the purview of s. 3 of the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 509 and 510 of 1960.

Appeals by special leave from the judgment and order dated October 26, 1956, of the former Madhya Bharat High Court Indore, in Civil Misc. Cases Nos. 26 of 54 and 48 of 55.

A. V. Viswanatha Sastri, C. B. Agarwala and *A. G. Ratnaparkhi*, for the appellants.

R. J. Bhave and *I. N. Shroff*, for the respondents.

1961. July 26. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—The appellant, the Indore Iron and Steel Registered Stock-holders' Association (Private) Ltd., is a registered Association whose constituent members carry on business generally in fabricated iron and steel material and more particularly in iron sheets, plain or corrugated, bars, rods, light and heavy structurals, nails, joints, wire nails and all kinds and varieties of wires and

1961

The Indore Iron and Steel Registered Stockholders' Assn.
v.
The State of Madhya Pradesh

Gajendragadkar J.

pipes. This business is carried on by the constituent members of the appellant at Indore and Ratlam at which places they have their registered offices. The State of Madhya Bharat, by its Act No. 30 of 1950, imposed sales tax in the territory of Madhya Bharat on the sales of goods therein specified with effect from May 1, 1950, and under the provisions of the said Act the Commissioner of Sales Tax, Madhya Bharat, and the Sales Tax Officer, Indore, who are respondents 2 and 3, were appointed authorities for the assessment of tax leviable under the Act and for its recovery in their respective areas.

Section 3 of the Act is the charging section and it provides for the incidence of taxation, Section 4, which deals with the application of the Act, exemption and exclusion, provides by Sub-s. (2) that no tax shall be payable under the Act on the sale of goods specified in the second column of Sch. I on conditions mentioned in column 3 of the Schedule. "Iron and steel" appears in Sch. I as item 39. Section 5 prescribes the rate of tax and it provides that the tax will be recoverable as notified from time to time by the Government by publication in the official gazette subject to the condition that it shall not be less than Rs. 1-9-0 per cent or more than $6\frac{1}{4}$ per cent. Section 4(3) authorises the Government by notification to modify Sch. I from time to time. Similarly s. 5(2) authorises the Government while notifying the tax payable by a dealer to notify the goods and the point of their sale at which the tax is payable. It is by virtue of this delegated power that the State of Madhya Bharat, respondent 1, purported to issue notifications to which we will presently refer.

On May 22, 1950, a notification was issued under s. 5(2) specifying serially the articles taxed, the stage of sale by traders in Madhya Bharat on which the tax is levied and the rate of sales tax per cent. Item 27 in the list dealt with goods manu-

factured from things (wastu) except gold and silver or goods manufactured from more than one metal (except circles and sheets of copper, brass and aluminium). The notifications provided that the tax had to be paid by the producer or importer at the rate of Rs. 3-2-0 per cent.

Meanwhile Art. 286(3) of the Constitution had come into force. This Article as it then stood provided that no law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community, shall have effect unless it has been reserved for the consideration of the President and has received his assent.

Thereafter Parliament by law proceeded to make the declaration as contemplated by this Article by s. 2 of Act 52 of 1952 [Essential Goods (Declaration and Regulation of Tax on sale or purchase) Act] (hereafter called the Act) which was passed on August 9, 1952. Section 2 of the Act provides that the goods specified in the Schedule are hereby declared to be essential for the life of the community. Item 14 in the Schedule refers to 'iron and steel'. Thus, as a result of these provisions 'iron and steel' came to be declared as essential for the life of the community within the meaning of Art. 286(3) as from August 9, 1952.

Respondent 1 thereupon purported to give effect to the provisions of Art. 286(3) and s. 2 of the Act by issuing two notifications on October 24, 1953. By the first notification it was provided that no tax shall be payable *inter alia* on the sale of iron and steel. 'Iron and steel' was placed at item 39 in the said Schedule. The other notification issued on the same day by item 9 in the list provided for the sale of the articles specified in the said item. This item reads thus :

1961

The Indore Iron and Steel Registered Stockholders' Assn.
v.
The State of Madhya Pradesh

Gajendragadkar J.

"Every kind of metal including copper, brass, manganese, zinc, lead, mercury, bronze, nickel, aluminium, tin and their ore form (excluding iron, steel, gold and silver) and goods prepared any metal other than gold and silver, utensils and wires, goods prepared from one ore more than one metal, utensils and wires which also includes mangars, metal pieces and scraps, cutting and lantern, gas, stove and type-letters (excluding circles and sheets of copper, brass and aluminium)."

It is common-ground that under this notification the articles in which the constituents of the appellant deal would be liable to pay the sales tax in question.

After this notification was issued the appellant wrote to respondent 3 claiming exemption from payment of sales tax for the goods and articles in which its constituent members are dealing but this plea was rejected by the said respondent, and the constituent members of the appellant were called upon to pay sales tax each in respect of their individual turnover. It was under these circumstances that the appellant filed two writ petitions under Art. 226 of the Constitution in the High Court of Madhya Bharat at Indore in which it challenged the validity of the assessment orders passed for the two years 1953-54 and 1954-55 respectively (Petitions Nos. 26 of 1954 and 48 of 1955).

The appellant's case was that the articles in which the constituent members of the appellant dealt were covered by the parliamentary declaration contained in s. 2 of the Act and as such were no longer liable to pay sales tax. This plea was resisted by the respondents. It was urged on their behalf that the notification issued by respondent 1 on October 24, 1953 was valid, and item 27 in the list notified brought the articles in question within the mischief of the Sales Tax Act and so the petitioners were not entitled to any writ as claimed by them. The High Court has upheld the plea

raised by the respondents, rejected the contentions urged by the appellant and has dismissed the writ petitions filed by it. It is against these orders of dismissal passed by the High Court in the two writ petitions filed by the appellant that the present appeals, Nos. 509 and 510 of 1960, have been brought to this Court by special leave granted by this Court.

Two points have been urged before us by Mr. Viswanatha Sastri, on behalf of the appellant, in support of these appeals. It is urged that s. 2 of the Act which contains the parliamentary declaration as contemplated by Art. 286(3) covers iron and steel as understood in their commercial sense. The words "iron and steel" should not be interpreted in their narrow dictionary meaning. They do not mean iron and steel as they come out after smelting but they mean articles exclusively made from iron and steel in which the identity of iron and steel has not been lost. In other words, iron and steel in the context mean all articles made exclusively of iron and steel in which steel merchants normally and generally trade. It is further argued that in construing the words "iron and steel" we must bear in mind the fact that the object of Art. 286(3) is to safeguard the interest of the consumer in regard to the articles which Parliament may declare to be essential for the life of the community, and it is suggested that if the narrow dictionary meaning of the words is adopted it would not serve the said object and purpose of the constitutional provision.

Mr. Sastri has also relied on what he has described as the legislative history which indicates that the said words should receive a broad and wide construction in the context. In that connection he has invited our attention to the provisions of s. 2(d), s. 3 and the categories specified in the Second Schedule to the Iron and Steel

1961

The Indore Iron and Steel Registered Stockholders' Assn.
v.
The State of Madhya Pradesh

Gajendragadkar J.

(Control of Production and Distribution) Order, 1941. These categories, according to Mr. Sastri, unmistakably support his argument that the expression "iron and steel" as used in the order was obviously used in a very wide and broad sense. Similarly, he has referred to the provisions of s. 2(a)(vii) of Act XXIV of 1946 [The Essential Supplies (Temporary Powers) Act, 1946] and s. 2(a)(vi) of Act 10 of 1955 (The Essential Commodities Act, 1955). His contention is that it would be legitimate for the Court to consider the legislative history in the matter of the use of these words and their denotation, and that the legislative history to which he has referred supports his argument that the words "iron and steel" should receive a very liberal interpretation in determining the effect of the provisions of s. 2 of the Act. The High Court was not impressed by this argument. It has held that the words "iron and steel" as used in Entry 14 to Sch. 1 of the Act do not include within their ambit articles made of iron and steel such as those with which we are concerned in the present proceedings. Mr. Sastri seriously questions the correctness of this conclusion.

It is clear that even if we were to accept Mr. Sastri's contention in regard to the denotation of the words "iron and steel" as used by the relevant provisions of the Act it would still have to be shown by the appellant that the impugned notification is invalid because it contravenes the provisions of Art. 286(3). In other words, in order to succeed in the present appeals the appellant has to prove two facts, (1) that the words "iron and steel" in respect of which the requisite parliamentary declaration has been made by s. 2 of the Act include commodities like those with which we are concerned, and (2) that the impugned notification contravenes Art. 286(3). It would thus be seen that unless the appellant succeeds in both these contentions the appeals are bound to fail. Since

we have reached the conclusion that even on the assumption that the parliamentary declaration made by the relevant provision of the Act includes commodities with which we are concerned is correct it does not follow that the impugned notification contravened Art. 286(3) we do not propose to deal with the first point raised by Mr. Sastri. In dealing with these appeals we would assume in his favour that the words "iron and steel" should receive the broad and wide interpretation for which he contends.

Assuming then that the articles in which the constituents of the appellant deal are covered by the parliamentary declaration made by the Act does it follow that the impugned notification contravenes Art. 286(3) ? That takes us to the provisions of Art. 286(3) which we have already cited. This provision can be successfully invoked only if three conditions are satisfied. The first condition is that the impugned law must be one which is made by the Legislature of a State which obviously means a State which came into existence under and after the Constitution ; and that shows that the impugned law must be a law made by the Legislature of a State subsequent to the Constitution. This condition is satisfied in the present case because the impugned notification has been issued by virtue of the authority delegated to respondent 1 by Act 30 of 1950 and this Act was passed after the Constitution was adopted.

Let us then consider the second condition which is also in the nature of a condition precedent. This condition requires that the impugned law must impose or authorise the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community. There can be little doubt that this condition postulates that at the time when the impugned law is passed there is a

1961

The Indore Iron and Steel Registered Stock-holders' Assn.
v.
The State of Madhya Pradesh

Gajendragadkar J.

preexisting declaration made by Parliament in regard to the essential character of a commodity. The material words in respect of this condition are that the sale or purchase of any such goods as *have been declared* by Parliament by law to be essential for the life of the community. Therefore, if the parliamentary declaration follows the impugned enactment it cannot retrospectively affect the validity of the said enactment. Article 286(3) contemplates that if in the face of an existing parliamentary declaration about the essential character of a commodity the Legislature of a State purports to impose or authorise the imposition of a tax on such commodity the enactment would be invalid unless the law made by the Legislature has been reserved for the consideration of the President and has received his assent.

The third condition emphasises that the impugned law must have been passed subsequent to the Constitution, because unless the relevant provision of the Constitution for the reservation of the law for the consideration of the President has come into force this condition cannot apply. This requirement obviously means that the office of the President must have come into existence and so this condition can become operative only after the Constitution has come into force. Therefore, the third condition supports the conclusion which arises from the words used in the first condition itself.

Thus the position is that Act 30 of 1950 satisfies the first condition but not the second. It is conceded that the relevant provisions of the M. B. Act of 1950 authorise the imposition of tax on the commodities in question and that the impugned notification is otherwise consistent with, and justified by, the said provisions of the Act. Now, if the said M. B. Act authorises the imposition of tax on the goods in question and the said goods were not declared by Parliament by law to be

essential for the life of the community before the date of the said Act its validity cannot be challenged on the ground that it was not reserved for the consideration of the President and had not received his assent. It is only when all the conditions prescribed by Art. 286(3) are present that the validity of the impugned law can be successfully challenged.

The question about the construction of Art. 286(3) has been considered by this Court on two occasions. In *Sardar Soma Singh* v. *The State of Pepsu and Union of India*(1), S. R. Das, J., as he then was, who spoke for the Court has observed that it is quite clear that s. 3 of Act 52 of 1952 does not affect the Ordinance there challenged for the said Ordinance was not made after the commencement of the Act, and that Art. 286(3) contemplates a law which can be but has not been reserved for the consideration of the President and has not received his assent. This position clearly points to post-constitutional law for there can be no question of an existing law continued by Art. 372 being reserved for the consideration of the President for receiving his assent. This decision supports the conclusion that the law contemplated by the first condition specified in Art. 286(3) must be post-constitutional law. To the same effect are the observations made in the majority judgment of this Court in *Firm of A. Gowrishankar* v. *Sales Tax Officer, Secunderabad*(2).

In this connection it would be relevant to refer to s. 3 of the Act itself. It provides that no law made after the commencement of this Act by Legislature of a State imposing or authorising the imposition of a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his

(1) (1954) S.C.R. 955.
(2) A.I.R. 1958 S.C. 883.

1961

The Indore Iron and Steel Registered Stockholders' Assn. v. The State of Madhya Pradesh

Gajendragadkar J.

assent. This provision also shows that the declaration made by the Act was intended to be prospective in operation and it would affect lawsmade after the commencement of the Act, and that clearly must mean that if a law had been passed prior to the commencement of the Act and it authorised the imposition of a tax on the sale or purchase of certain commodities its validity cannot be challenged on the ground that the said commodities have been subsequently declared by the Act to be essential for the life of the community. The impugned notification with which we are concerned and the Act under which it has been issued are thus outside the purview of s. 3 of the Act. That in substance is the finding made by the High Court on the second contention raised before it by the appellant. In our opinion, the conclusion of the High Court on this point is right.

In the result the appeals fail and are dismissed with costs.

Appeals dismissed.

THE AHMEDABAD MISCELLANEOUS INDUSTRIAL WORKERS' UNION

v.

THE AHMEDABAD ELECTRICITY CO. LTD.

1961

July 28.

(K.N. WANCHOO and K.C. DAS GUPTA, JJ.)

Bonus—Payable by electricity company—Depreciation—Mode of calculation—Indian—Income-tax Act (11 of 1922), Rules—Sch. VII—Electricity (Supply) Act, 1948 (54 of 1948).

The respondent, which is an electricity company, contested the claim of the appellant for three months' wages as bonus on the ground that if calculation was made on the Full Bench Formula evolved by the Labour Appellate Tribunal and approved by this Court in the *Associated Cement Companies Ltd.* v. *Its Workmen, (1959)* S. C. R. 925, there would be no surplus available to pay the bonus. The question which arose for decision was whether depreciation should be calculated according to the provisions of Income-tax Act and the