possession, showing a rational relation between the differential treatment and the classification and has also not placed any material before the Court throwing light on the question whether the continuance of the tax was justified: it merely chose to plead its case as on a demurrer. Both the State and the Company have by inadequate appreciation of the true position in law contributed to the manner in which the trial of the petition has proceeded. We would in the circumstances not be justified in dismissing the petition on a technical view of the burden of proof. We think that this is a case in which the parties should be given an opportunity to plead their respective cases adequately and to go to trial after the requisite evidence which has a bearing is brought before the Court.

We accordingly allow the appeal, set aside the order and remand the case for retrial to the High Court. The High Court, will, if the Company so desires, give opportunity to the Company to amend its petition so as to adequately plead its case of infringement of the fundamental right to equal protection of the laws supported by necessary particulars. The High Court will also give opportunity to the State to file its affidavit in reply and to place all such materials as it may rely upon the plea set up by the Company. After the pleadings are completed and the evidence is brought on the record, the High Court will proceed to decide the case according to law. Costs in this Court will be the costs in the petition before the High Court.

Appeal allowed.

HUKUMCHAND MILLS LTD.

v.

THE STATE OF MADHYA BHARAT AND ANOTHER

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February 20.

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Industrial Tax—Assessment under the Tax Rules—Amendment—Validity—Assessment under the old law if validated by the Validating Act—Validating Act if, hit by Art. 14—Indore Industrial Tax

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Rules, 1927: *rr.* 17, 18—*Finance Act No.* 25 *of* 1950—*Madhya Bharat Taxes on Income* (*Validation*) *Act No.* 38 *of* 1954—*Constitution of India, Art.* 14.

The appellant, a Cotton Mill in Indore in Holkar State was taxed in respect of profits, gains and income under the Indore Industrial Tax Rules, 1927 by the then Ruler of Indore. The Holkar State merged into the State of Madhya Bharat which acceded to India. The Rajpramukh of the new State promulgated an Ordinance No. 1 of 1948 to provide for peace and good Government of the State. This Ordinance was superseded by Act 1 of 1948. Thereafter on December 28, 1949, the Government issued a Notification under r. 18 of the Tax Rules purporting to make rules under r. 17 thereof. These rules made certain amendments in the Tax Rules. The State of Madhya Bharat became one of the Part B States on January 26, 1950. From April 1, 1950, Finance Act No. 25 of 1950 came into force and applied to Madhya Bharat also. According to its provision, the Tax Rules came to be repealed from after the accounting year ending on March 31, 1949 and assessments could only be made under the Tax Rules upto the end of the accounting period ending on or before March 31, 1949. It further provided that even the assessments for the years previous to the accounting year ending on March 31, 1949 could only be made by the corresponding authorities under the Income-tax Act, and that appeals would lie to the corresponding authorities under the Income-tax Act; no levy and assessment could be made by the authorities under the repealed law and no appeal would lie to the authorities or Court under that law. This provision as to the authorities competent to make assessments was lost sight of with the result that assessments were made for the years in dispute which were all before the accounting year ending on March 31, 1949 by the authorities under the Tax Rules, as they were before their repeal. When this mistake was discovered, Parliament passed the Madhya Bharat Taxes on Income (Validation) Act, No. 38 of 1954. The appellant then challenged the validity of the assessments under the Tax Rules, on the grounds: (1) that the amendments of the Tax Rules on December 28, 1949 were invalid as such amendments could not be made under r. 17 of the Tax Rules, as was purported to be done; (2) even if the amendments were good, they could not have retroactive effect and could not take away the vested right of appeal; (3) as after the Finance Act, 1950, assessments were made by the old officers appointed under the Tax Rules and not by the corresponding officers under the Income-tax Act, the assessments were invalid and the Validating Act could not validate them because, (i) the Validating Act itself was discriminatory and was hit by Art. 14, and (ii) because in any case it did not apply to the present assessments. The High Court repelled all these contentions and dismissed the writ petition. On appeal by certificate this Court,

Held: (i) The amendments which were made in the Tax Rules on December 28, 1948, could be justified on the basis of Act 1 of 1948. All that s. 5 of Act 1 of 1948 requires is the publication of the

regulation made thereunder and their being made by Government, and that has been complied with in this case. There is no other formality required for making regulations and therefore, even though there was a mistake in the opening part of the Notification of December 28, 1949, the amendments made in the Tax Rules can be upheld under s. 5 of Act 1 of 1948 as regulations.

(ii) Even a vested right of appeal can be taken away by express legislation or by legislation which, though it may not expressly repeal the vested right of appeal, has the effect of such repeal by necessary implication. Though the right of second appeal on facts is taken away by the new rule 13 inserted in the Tax Rules, such right is taken away by legislation by necessary intendment. Therefore, the right of second appeal after the amendment must be confined in all cases by necessary intendment to questions of law only.

(iii) The Validating Act is not hit by Art. 14. The present cases are with reference to years 1940—48, that is before the accounting year ending on March 31, 1949. The assessments in these cases were carried on by the old officers under the old law and the Validating Act specifically validates such assessments. In these circumstances it cannot be said that these assessments have not been validated by the Validating Act.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 316 of 1962.

Appeal from the judgment and order dated January 2, 1959 of the Madhya Pradesh High Court (Indore Bench) at Indore in Civil Misc. Case No. 20 of 1955.

M. C. Setalvad, G. S. Pathak, B. Dutta, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

B. Sen and *I. N. Shroff*, for the respondents.

February 20, 1964. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave against the judgment of the Madhya Pradesh High Court. It raises the question of the validity of certain provisions of the Indore Industrial Tax Rules, 1947, (hereinafter referred to as the Tax Rules) and assessments made thereunder for the years 1940 to 1948. The appellant is a cotton mill and in 1927 a tax was imposed on cotton mills in Indore in Holkar State by the then Ruler in respect of profits, gains and income of such mills. This was done under the Tax Rules promulgated by the Ruler of Indore. The procedure under

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the Tax Rules provided for a board of assessing officers. The orders of the board were open to appeal to the Member in-charge of Commerce and Industry Department. Thereafter a second appeal was provided to the Government. Rule 17 of the Tax Rules further provided that the power of making rules was vested in the Government and such power shall, except on the first occasion of exercise thereof, be subject to the condition of previous publication. Rule 18 provided that Rules made under r. 17 shall be published in the State Gazette and thereafter shall have the force of law. Rule 19 provided that the Member in-charge of Commerce and Industry Department shall have power to make subsidiary rules not inconsistent with the Tax Rules. On May 28, 1948, the Holkar State merged to form the State of Madhya Bharat. On July 19, 1948, the State of Madhya Bharat acceded to India. Ordinance No. 1 of 1948 was promulgated by the Rajpramukh of the new State of Madhya Bharat to provide for the peace and good government of the State. This Ordinance was superseded by Act 1 of 1948 which came into force on December 13, 1948. Section 4 of the Act provided for the continuance of the existing laws of any covenanting States or of any State which merged in the State of Madhya Bharat until repealed or amended under the provisions of the Act. Section 5 of the Act provided that the Government may by notification published in the Government Gazette make regulations for the peace and good government of all the territories which had already been included in the new State or which may be included in it under the provisions of s. 3 of the Act. Such regulations were to have the force of law unless they were repugnant to any Act or law or Ordinance made by the Rajpramukh, in which case to the extent of their repugnancy they would be void. Further it was provided that such regulations may repeal or amend any law already in force in any State before its administration was taken over or before it was, as the case may be, merged in the new State. Finally the section provided that the right of the Rajpramukh to make Ordinances for the peace and good government of the new State or of the States which may become merged in the said State would remain unaffected.

In view of the merger of the Holkar State into the State of Madhya Bharat, some of the provisions of the Tax Rules

had to be changed to bring them into line with the new set-up. Consequently, on December 28, 1949, the Government of Madhya Bharat issued a notification under r. 18 of the Tax Rules purporting to make rules under r. 17 thereof. These rules made certain amendments in the Tax Rules. It is not necessary to refer to all the amendments as we are concerned here only with three amendments. The first amendment was that instead of the board making the assessment, the assessment was to be made by an assessing officer. The second amendment was that the appeal from the assessing officer was to be heard by an officer appointed from time to time by the Minister in-charge of the Finance Department in place of the Member in-charge of Commerce and Industry Department. The third amendment was with respect to second appeals. The amendment provided that instead of the Government hearing second appeals which under the old provision lay both on facts and law, second appeals thereafter were to be heard on a point of law by the High Court. Then came the Constitution of India on January 26, 1950 and the State of Madhya Bharat became one of Part B States. In the Finance Act No 25 of 1950, which came into force from April 1, 1950 and applied to Madhya Bharat also, a provision was made that any law relating to income-tax or super-tax or tax on profits of business in any part B State shall cease to have effect except for the purpose of levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purpose of assessment under the Indian Income Tax Act, No. XI of 1922 for the year ending on March 31, 1951 or for any subsequent year or, as the case may be, the levy, assessment and collection of the tax on profits of business for any chargeable accounting period ending on or before March 31, 1949. The effect of this was that the Tax Rules came to be repealed from after the accounting year ending on March 31, 1949, and assessment could only be made under the Tax Rules upto the end of the accounting period ending on or before March 31, 1949. A further provision was also made in the Finance Act, 1950, that any reference in any such law to an officer, authority, tribunal or court shall be construed as a reference to the corresponding officer, authority, tribunal or court appointed or constituted under the Income Tax Act. The result of this provision was that even the assessments

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for the years previous to the accounting year ending on March 31, 1949 could only be made by the corresponding authorities under the Income Tax Act, and the appeals would lie to the corresponding authorities under the Income Tax Act; no levy and assessment could be made by the authorities under the repealed law and no appeal would lie to the authorities or court under that law. It seems however that this provision of the Finance Act as to the authorities competent to make assessments was lost sight of with the result that assessments were made for the years in dispute in the present appeal which are all before the accounting year ending on March 31, 1949, by the authorities under the Tax Rules, as they were before their repeal. Consequently when this mistake was discovered, Parliament passed the Madhya Bharat Taxes on Income (Validation) Act, No. 38 of 1954 (hereinafter referred to as the Validating Act), s. 3 of which provided that " notwithstanding anything contained in the first proviso to sub-section (1) of section 13 of the Finance Act, all proceedings taken, assessments made and other acts and things done (including orders made) by or before any officer, authority, tribunal or court acting or purporting to act under the relevant Madhya Bharat law in connection with the levy, assessment and collection of any tax due, under any such law in respect of the relevant period shall be deemed always to have been valid and shall not be called in question on the ground only that such proceedings were not taken, assessments were not made or acts or things were not done by or before the corresponding officer, authority, tribunal or court referred to in the said proviso." Section 4 of the Validating Act further provided that "if immediately before the commencement of this Act, any proceedings of the nature referred to in section 3 are pending before any officer, authority, tribunal or court acting or purporting to act under the relevant Madhya Bharat law, such proceedings may, notwithstanding anything contained in the first proviso to sub-section (1) of section 13 of the Finance Act, be continued and completed in accordance with the provisions of the relevant Madhya Bharat law, and the provisions of the said proviso shall not apply, and shall be deemed never to have applied, in relation to any such proceedings." What had happened in the present case and in some other cases relating to laws which corresponded to the Indian Income-tax

Act was that the authorities under the Tax Rules made assessments in spite of the provisions in the Finance Act by which such assessments should thereafter have been made by the corresponding authorities under the Indian Income-Tax Act, and that is why the Validating Act had to be passed.

The appellant challenged the validity of the assessments made against it under the Tax Rules by a writ petition filed in the Madhya Bharat High Court in 1955, on the following grounds:—

(1) The amendments of the Tax Rules on December 28, 1949 were invalid as such amendments could not be made under r. 17 of the Tax Rules, as was purported to be done.

(2) Even if the amendments made on December 28, 1949 were good, they could not have retroactive effect and could not take away the vested right of appeal.

(3) As after the Finance Act, 1950, assessments were made by the old officers appointed under the Tax Rules and not by the corresponding officers under the Indian Income Tax Act, the assessments were invalid and the Validating Act could not validate them (firstly) because the Validating Act itself was discriminatory and was hit by Art. 14 and (secondly) because in any case it did not apply to the present assessments.

The High Court repelled all the contentions raised on behalf of the appellant and dismissed the writ petition. Thereupon the appellant applied to the High Court for a certificate of fitness, which was granted; and that is how the appeal has come up before us. We propose to deal with the points raised in the order in which they have been set out above.

Re. (1):

The first question is about the validity of the amendments made in the Tax Rules on December 28, 1949. It is true that the notification by which amendments were made purports to have been published under r. 18 of the Tax Rules read with r. 17. The argument on behalf of the appellant

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is that r. 17 of the Tax Rules must be treated on a par with provisions in a statute which provide for framing of rules, and these rules are subordinate legislation made for carrying out the purposes of the statute, and the power to frame such rules does not include the power to modify the parent law under which the rules have to be framed. We do not think it necessary for present purposes to consider this argument, for we are of opinion that the amendments which were made in the Tax Rules on December 28, 1949 can be justified on the basis of Act 1 of 1948, which was passed on December 13, 1948 by the Rajpramukh. That Act, as already indicated, provided by s. 5 that the Government, by notification published in the Government gazette, may make regulations for the peace and good government of all the territories which had been included in the State of Madhya Bharat or which may be included in it under the provisions of s. 3 of the Act. It also provided for the repeal or amendment by regulation of any law already in force in any State before its administration was taken over or before it was, as the case may be, merged in the United States. The Government had therefore the power to amend the Tax Rules under s. 5(1) read with s. 5 (3) of Act 1 of 1948. The notification of December 28, 1949 by which the amendments were made was published in the gazette of the Madhya Bharat State and the amendments were made by the Government. It is true that in the opening part of the notification it is said that the amendments were made under r. 17 of the Tax Rules; but that in our opinion would not conclude the matter, for if the Government had the power to make amendments under Act 1 of 1948, the amendments in the Rules could be justified under that power in spite of the wrong words used in the opening part of the notification of December 28, 1949. It is well settled that merely a wrong reference to the power under which certain actions are taken by Government would not *per se* vitiate the actions done if they can be justified under some other power under which the Government could lawfully do these acts. It is quite clear that the Government had the power under s. 5 (1) and (3) of Act 1 of 1948 to amend the Tax Rules, for that was a law in force in one of the merged States. The only mistake that the Government made was that in the opening part of the notification s. 5 of the Act was not referred to and the noti-

fication did not specify that the Government was making a regulation under Act 1 of 1948. But that in our opinion would make no difference to the validity of the amendments, if the amendments could be validly made under s. 5 of Act 1 of 1948. It is not disputed that the amendments could be validly made under s. 5 of Act 1 of 1948. We are therefore of opinion that the mere mistake in the opening part of the notification in reciting the wrong source of power does not affect the validity of the amendments made. It is urged that the Government knew that it could only make regulations under s. 5 and it had made regulations under s. 5 of Act 1 of 1948 in certain cases. Even if that be so, there can in our opinion be no doubt about the validity of the amendments made if the Government had power to make them, even though there was a mistake in the opening part of the notification publishing the amendments. All that s. 5 of Act 1 of 1948 requires is the publication of the regulation made thereunder and its being made by Government; and that has been complied with in this case. There is no other formality required for making a regulation and we are therefore of opinion that even though there was a mistake in the opening part of the notification of December 28, 1949, the amendments made in the Tax Rules can be upheld under s. 5 of Act 1 of 1948 as a regulation. We therefore reject the contention under this head.

Re. (2):

Then it is urged that even if the amendments to the Tax Rules are good, they could not affect vested rights of appeal provided under the old law before the amendments and therefore insofar as the amendments affect this vested right, they are of no effect. Now it is well settled that even a vested right of appeal can be taken away by express legislation or by legislation which, though it may not expressly repeal the vested right of appeal, has the effect of such repeal by necessary implication. We have already pointed out that in view of the coming into existence of the new State of Madhya Bharat, amendments to the Tax Rules had become necessary in order to bring them into line with the structure of the new State. The three main amendments made in the Tax Rules have already been set out by us. Learned counsel for the

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appellant does not attack two of them, namely, those relating to the assessment officer and the first appeal provided by the amendments. The attack is on the amendment of r. 13 of the Tax Rules providing for a second appeal. Under the old Rules, a second appeal lay to the Government both on fact and law; under the new law, it lay to the High Court only on a question of law. The quarrel is not with the forum of the second appeal; what is urged is that the new rule does not allow a second appeal on a question of fact while the old rule did. That is undoubtedly so. But considering the set up in which the amendments had to be made, it seems to us that even if the new rule cannot be read as an express provision taking away the right of second appeal on facts, it must in the circumstances be held that it does take away that right by necessary intendment. The new rule provided for a second appeal like the old rule but confined it to a question of law. The necessary implication of the new rule therefore was that though a second appeal will continue to lie as before its scope was cut down only to questions of law. We are therefore of opinion that though the right of second appeal on facts is taken away by the new rule 13 inserted in the Tax Rules, such right is taken away by legislation by necessary intendment. In the circumstances we are of opinion that the right of second appeal after the amendment must be confined in all cases by necessary intendment to questions of law only. The contention under this head also fails.

Re. (3):

Coming now to the last point with respect to the Validating Act, we have not been able to understand how the Validating Act can be said to be discriminatory in nature. A Validating Act is passed only when certain things have been done which require validation. This is exactly what the present Validating Act has done and we fail to see on what grounds it can be said to be discriminatory. Even when the Finance Act of 1950 was passed it would have been open to Parliament to leave the old assessments to be carried on under the old procedure and by officers appointed under the old law and such action could not be called discriminatory, for the simple reason that the old assessments

stand on a different footing from new assessments after the new law comes into force. It is true that Parliament provided otherwise in this case and the Finance Act of 1950 said that the old assessments would be carried on by the corresponding officers under the Indian Income Tax Act. By mistake however that provision was overlooked and the old assessments were made by the old officers under the old law. All that Parliament did by the Validating Act was to allow the old assessments to be made under the procedure provided under the old law and we can see no discrimination in the Validating Act on account of this fact. We are therefore of opinion that the Validating Act is not hit by Art. 14. Further we have not been able to understand how the validation is of no effect so far as the present cases are concerned. The present cases are with reference to years 1940—48, that is before the accounting year ending on March 31, 1949. The assessments in these cases were carried on by the old officers under the old law and the Validating Act specifically validates such assessments. In these circumstances we have not been able to understand how it can be said that these assessments have not been validated by the Validating Act. The contention under this head must therefore also fail.

The appeal fails and is hereby dismissed with costs.

Appeal dismissed.

R. ABDUL QUADER AND CO.

v.

SALES TAX OFFICER, HYDERABAD

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR, JJ.)

Sales Tax—Tax Collected otherwise than in accordance with the Act—Provision enabling the Government to recover such tax collected—Not within the competence of State Legislature—Constitution of India, Schedule VII, Entry 26 and 54 of List II—Hyderabad General Sales Tax Act, 1950 (*XIV of* 1950), *s.* 11.