
(1956) 10 MP CK 0023

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Cases No"s. 26 of 1954, 32, 47, 48 and 60 of 1955 and 8 of 1956

Indore Iron and Steel Registered Stock-holders Association,
Ltd.

APPELLANT

Vs

State of Madhya Bharat and Others

RESPONDENT

Date of Decision : 26-10-1956

Acts Referred:

Constitution of India, 1950 — Article 168, 226, 227, 238, 286
Defence of India Rules, 1962 — Rule 181(2)
Essential Supplies (Temporary Powers) Act, 1946 — Section 20
Madhya Bharat Sales Tax Act, 1950 — Section 2, 2(1), 3, 322, 4

Citation : AIR 1957 MP 83

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : Waghmare and Chaphekar, for the Appellant; Adv.-General, for the Respondent

Judgement

Nevaskar, J.—These are seven petitions No. 26 of 1954, 32, 47, 48 (sic) of 1955. 7 & 8 of 1956 under Articles 226 and 227 of the Constitution. In all these petitions, (sic) against the Stats of Madhya Bharat, Commissioner of Sales Tax Madhya Bharat and Sales Tax Officers of various places mentioned in the respective petitions, common questions are raised regarding the taxability of various commodities of iron and steel described in them under Sales Tax Act, Madhya Bharat and the Notifications issued thereunder. In all petitions except petition No. 8 of 1956 filed by Rameshchandra s/o Harcharandas taxability is challenged as from 1-1-1954. In the case of the petition filed by Rameshchandra tax ability is challenged even in respect of the period prior to 1-1-1954 i.e. in respect of the year 1953 also. However at the time of argument Mr. Chaphekar who appeared for the Petitioner Rameshchandra frankly conceded that in view of the decision of this Court reported in Mohomed Siddiq v. State of Madhya Bharat Madh BLR (1956) Civil 204 : AIR 1956 MP 214 (A), it is not possible for him to assail the taxability of the quarterly periods prior to 1-1-1954. It further appears

that petitions No. 26 of 1954 and 48 of 1955 are overlapping and are by the same Petitioner in respect of the same subject matter and for the same relief.

2. All these petitions therefore involve the question whether the Sales Tax authorities could make a demand for and recover sales tax in respect of their turn-over for various quarterly periods subsequent to 1-1-1954.

3. Petitioners' case is that they carry on business of selling iron and steel goods such as iron plates, plain and corrugated sheets, bars, (sic) light, and heavy structurals, nails, joints, wire-nails and all sorts of wires, pipes etc.

4. By Section 4 of the Madhya Bharat Sales Tax Act. No. 30 of 1950 which came into force on 1-5-1950, it was provided that no tax shall be payable under that Act on the sale of goods specified in the second column of Schedule 1 to the Act and It was further provided that Government may from time to time by notification in the official gazette amend Schedule 1 and may by like notification exempt from tax the sale of any goods or class of goods or any person or class of persons on such conditions and on payment of such fees as may be specified in the notification.

5. By Section 3 it was provided that subject to the provisions of the Act every dealer as defined in the Act whose turnover in the previous year in respect of the sales of supplies of goods exceeds a certain figure mentioned in the Section in the case of particular class of dealers shall be liable to tax under the Act on his taxable turnover in respect of sales or supplies of goods in Madhya Bharat.

6. By Section 5 it is provided that the tax payable by a dealer shall be at a single point and shall not be less than Rs. 1-9-0 per cent or more than Rs. 6 1/4 per cent and in some special cases more than 12 1/2 per cent.

7. In accordance with this power the Government had levied sales tax by Notification No. (sic)3 dated 22-5-1950. Under this notification in item No. 27 it was provided that all goods made of materials other than gold and silver would be subject to tax at Rs. 3-2-0 per cent on the taxable turnover. Thus it included goods made of iron and 1-6-1950.

8. Thereafter Parliament passed Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act No. 52 of 1952, in pursuance of Clause 3 or Article 286 of the Constitution whereby they declared various kinds of goods as essential to life of the community for the purpose of Article 286(3) and Item No. 14 in the Schedule pertained to "Iron and Steel".

9. Subsequent to the passing of this Act, Government of Madhya Bharat published Notifications No. 58 and 59 dated 24-10-1953. Under the first Notification it granted exemption from tax to the item "Iron and Steel" which appeared as item No. 39 in the exemption list while by Notification No. 59 provision was made for a tax on articles made of all metals except gold or silver at the rate of Rs. 3-2-0 per cent By this latter notification charging lists notified earlier were superseded.

10. The Sales Tax Officers of the respective places issued demand notices for submission of returns, production of account-books and payment of tax in respect of sale or purchase of articles made of "Iron and Steel" such as are referred to above for the period subsequent to 1-1-1954 and In some cases took coercive action by imposing penalty under the Act.

11. The Petitioners contended before the Sales Tax Officers that they were not liable to tax for the sale of the various articles of Iron and Steel in which they deal as "Iron and Steel" are declared by Act No. 52 of 1952 as essential to the life of the community under Article 286(3) of the Constitution and that the words "Iron end Steel" in the said Act are used in the same sense in which these words are used in Iron and Steel (Control of Production and Distribution) Order, 1941 and that for that very reason Notification No. 58 dated 24-10-1953 exempted "Iron and Steel" from Sales Tax. Notification No. 59 dated 24-10-1953, therefore, under which the Sales Tax authorities took action is bad in law so far as the goods in question are concerned.

This contention of the Petitioners was over ruled by the Sales Tax authorities. The Petitioners did not prefer appeal under the Sales Tax Act but have moved this Court direct on the ground that their fundamental right to carry on trade is threatened by these demand-notices demands of returns and the coercive actions of the Sales Tax authorities.

12. It is therefore prayed by the Petitioners that the proceedings started by the Sales Tax authorities including demand notices, calling for the returns, imposition of penalty and for recovery of tax be quashed and mandamus be issued to the said authorities not to make recovery or the taxes in question for the period subsequent to 1-1-1954.

13. On behalf of the State end the Sales Tax authorities the petitions are opposed on the grounds that the charging notifications are (sic) valid in law and that Act No. 52 of 1952 does in no way come in the way of the impugned portion of item No. 9 in Notification No. 59 dated 21-10-1953 and that the exemption declared to have been granted under Notification No. 58 dated 21-10-1953 in respect of "Iron and Steel" in no way affects the charge-ability of articles of iron and steel in which the Petitioners deal.

The terms "Iron and Steel" as used both in the exemption list as well as in the Schedule to Act No. 52 of 1952 does not and cannot, according to the opponents mean articles made of Iron and steel and that reference to Iron and Steel "Control of Production and Distribution) Order, 1941 is irrelevant for this purpose. It is also contended that the position regarding the chargeability and rates of tax with respect to articles made of iron and steel, remains unchanged and these goods continue to be chargeable at the same rate at which they were chargeable earlier.

14. The questions which arise for consideration in view of the respective continuous of the parties referred to above are only two.

First: Whether the words "Iron and Steel" in Act No. 52 of 1952 include within their ambit articles made of iron and steel such as are in question ?

Second: Whether even if the word "Iron and Steel" in (Central) Act No. 52 of 1952 are held to be wide enough to include articles of iron and steel such as are in question, will that finding entitle the Petitioners to exemption from (sic) in view of the charging notification No. (sic) of 1950 and No. 59 of 1953 issued in(sic) of Madhya Bharat Sales Tax Act No. 30 of 1950 ?

15. It will be convenient to detail out the arguments put forward on behalf of the Petitioners by the two learned Counsel (sic) Chaphekar and Waghmare. Their contentions are as follows:

(I) The terms "Iron and Steel" ought to be understood in their ordinary commercial sense. They Should be construed in the same (sic) in which they are known to the traders.

These terms according to the Petitioners. are used by traders to mean articles made of iron and steel.

These terms according to the Petitioners, are used by traders to mean articles made of iron and Steel. The metal or ore containing this metal or alloy cannot mean iron and steel.

(II) The term "Iron and Steel" has acquired a definite connotation in the legislative parties of this country since the year 1911. In (sic) Acts and Ordinances dealing with the subject of roads essential to the life of the community these words are used in more comprehensive sense to include all the articles in respect of which the Department has called for returns.

Reference may be made in this connection to Iron and Steel (Control of Production and Distribution) Order, 1941, Essential Supplies (Temporary Powers) Act, 1956 and Essential Communities Act No. 10 of 1950. In all these legislations which precede and follow Act No. 52 of 1952 the words are used in sufficiently comprehensive sense to include all the articles which are the subject-matter of dispute in these proceedings. These various pieces of legislation are in pari materia or at any rate (sic) relevant to understand the underlying meaning of these terms.

(III) Having regard to the purpose of this piece of legislation it cannot be denied that the object of the Act is to prevent the State Legislatures from strangulating the free flow of goods declared as essential for the life of the community by the imposition of undue taxation and to make them available throughout the country. Now if the term "Iron and Steel" is confined to metal or ore the real efficacy of a declaration under Article 286(3) of the Constitution is lost.

Common man for whose protection this Act is intended can hardly benefit if the exemptions were confined to the commodities in their metallic form and did not extend to other forms which are in their nature essential to the life of the

community. The buckets, vases, nails, sheets, wires,, plates etc. are in fact the things which are need-ed by common men, traders and consumers alike, for their day to day requirements. If these things were not included in the ambit of exemption the entire efficacy of the provision would be lost.

Therefore for achieving the object of the Act even if a slight straining of the language is need ed it should be clone in this case. Because by construing the words in that wider sense the purpose of the Act will be advanced while construing them to mean corresponding metal the purpose will be substantially frustrated.

16. The counsel for the Petitioners referred in this connection to the decision of their Lord- ships of the Supreme Court, in *State of Madras Vs. C.P. Sarathy and Another*, , and particularly to the observations of Lord Atkins in *Keates v. Lewis Merthyr Consolidated Collieries Ltd.* 1911 AC 641 (C), quoted therein which are to the following effect:

In the construction of a statute it is, of course, at all times and under ail circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evils which, as appears from its provisions, it was designed to remedy. If the words be capable of one meaning alone, then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or particular piece of legislation had in view.

17. The learned Counsel then referred to the decision of the Supreme Court in *Bengal Immunity Co. Ltd. v. State of West Bengal* (S) AIR 1955 SC 161(D), wherein in Para 24 of the report, his Lordship the Acting Chief Justice set out and explained the scheme and purpose of Article 286 of the Constitution. The learned Counsel particularly referred to the observations in connection with Clause (3) of Article 286 to the following effect:

Finally the attention of the Constitution makers was rivetted on the character and quality of the goods themselves and they placed a fourth restriction on the State's power of imposing tax on sale or purchase of goods essential for the life of the community.

18. According to the learned Counsel the object of Act No. 52 of 1952 was to select goods essential for the life of the community and to place, restrictions on the power of the States to impose tax on sale or purchase of them. These goods having been selected by reference to particular name by which the goods are known to the traders, their scope and sphere of activity must be determined by reference to the object of the Act and the evil which it was sought to remedy.

Since, according to the learned Counsel, the object of the Act is to select goods essential to the life of the community and to place legislative restraint on State's power of taxation pertaining to them and since the evil which the Act is design ed to avoid is to permit the free flow or availability of these goods throughout the

country, the words iron and steel ought to be construed with reference to these considerations and when so construed they ought not to be construed narrowly to mean metal so as to render its efficacy negatory thereby frustrating the object of the Act.

19. Reliance was then placed upon the decision reported in *State of Bombay v. Virkumar Gulabchand Shah* AIR 1952 SO 335(E) wherein the question raised was whether "Turmeric" fell within the category of "Foodstuff" meaning of the Species the category of "Foodstuff" within the meaning of the Spices (Forward Contract Prohibition) Order 1944 read with Section 20a) Essential Supplies Temporary Powers) Act, 1946. It was contended that if the category "Foodstuff" was construed in wider sense to include "turmeric" there is no reason why the category "Iron and Steel" be not construed to include objects made of iron and "Steel which from their very nature are essential to the life of the community.

20. It was urged in the alternative that even if there be some doubt as to whether the wider or the narrow meaning is to be taken the benefit of that doubt should go to the Assessee. Reliance was Placed upon the observations in Maxwell's interpretation of Statutes, pages 291-92 and *State of Bombay Vs. R.S. Phadtare*,

21. Thus, it was contended, if it be held that the words "Iron and Steel" are wide enough to include the articles made of iron and steel then in as much as the Notification dated 24-10-1953 was issued by the Government in pursuance of the power conferred upon it u/s 5 of the Madhya Bharat Sales Tax Act, 1950 this was a legislative function by a subordinate legislative authority in exercise of its delegated power of legislation. After the declaration of the commodity as essential to the life of the community it was void being contrary to Article 286(3) of the constitution there being nothing to show that the notification in question was reserved for consideration of the President and had received his assent.

22. The relevant time to consider the validity of the tax with reference to Act No. 52 of 1952 and Article 286(3) of the Constitution, is not when the Madhya Bharat Sales Tax Act was passed but when the Notification which imposed the tax was issued by the Government. Even the Notifications issued under the delegated power by the subordinate authority are treated as Law for the purpose of Article 286(3) of the Constitution and Act No. 52 of 1952.

23. It was therefore pressed that the Notification No. 59 dated 24-10-1953 in so far as it imposes a tax on sale of "Iron and Steel" goods being sub sequent to the declaration of these commodities as essential to the life of the community is bad in law as it had not been reserved for consideration of the President and had not received his assent.

24. It was further urged that the entire notification need not be held void. In so far as it re-pealed the Schedule of rates of sales-tax on these commodities, which was in force prior to coining into force of that notification, it is perfectly valid and ought to be held good. No tax therefore is leviable on the turnover of

the articles of iron and steel such as are in question in these cases in respect of the quarterly periods subsequent to 1-1-1954 even under earlier Notification No. 3 of 1950.

25. Learned Counsel for the Petitioners referred to certain authorities notably *Kapildeoram Baijnath Prosad v. J.K. Das* AIR 1954 Gau 170 (G) *Kayani and Co. Ltd. v. Commr. of Sales Tax* 1953 4 STO AP (H), *Sadhu Singh and Others Vs. The Financial Commissioner Relief and Rehabilitation (Custodian) Punjab, Simla and Others*, *King v. Planters Nut and Chocolate Co. Ltd.* 1951 CLR 122 (J) & *King v. Planters Nut and Chocolate Co. Ltd.* 1952 CLR 91 (K), in support of the contention that wide meaning was preferred in those cases in respect of the terms which were respectively the subject matter of controversy in them.

26. On the other hand the learned Advocate General who appeared on behalf of the opponents tried to meet all these contentions.

27. The out-line of his argument is as follows:

The terms "Iron and Steel" as used in Act No. 52 of 1952 do not include within their ambit any thing else than the corresponding goods in their metallic form. They do not, at any rate, include articles made of iron and steel such as are in question. Standard English dictionary such as Shorter Oxford dictionary gives the meaning of the word "Iron" as metal of the description given therein. So also the word "Steel" means metal made of iron with certain percentage of carbon possessing peculiar qualities of hardness etc., described there. The dictionary-meaning of these terms is not wide enough to include articles made of these metals.

Where the language of the statute is plain and not capable of constructions more than one it is not permissible to resort to external tests for the purpose of construction. The three pieces of legislation viz. Iron and Steel (Control of Production and Distribution) Order 1941, Essential Supplies (Temporary Powers) Act No. 24 of 1946 and Essential Commodities Act No. 10 of 1955 which use the words iron and steel are not in pari materia and cannot be called in aid to widen the plain and natural ambit of the terms as used in Act No. 52 of 1952. The object of these legislations is different from that of Act No. 52 of 1952. The evil which they seek to avoid is different. The wide scope of the meaning attached to these terms in the aforesaid three legislations is indicated in the four corners of the respective legislations themselves while this is not so in Act No. 52 of 1952.

"Iron and Steel" Order 1941 was made during the time of war emergency as a war measure. Wide powers were meant to be conferred upon the Executive under Defence of India Rules to deal with any situation which may threaten the life of the community, public safety, defence of the realm or efficient prosecution of war. "Iron and Steel" Control Order 1941 was issued in pursuance of these powers. The Order itself indicated that words "Iron and Steel" were meant to imply all things made of iron and steel as detailed in the Schedule attached to the Order. The words were not used in their plain and natural meaning but were

in tended to be used in special sense defined in the Order itself.

The terms "Iron and Steel" as used in Act No. (Temporary Powers) Act No. 24 of 1946 which was intended to provide for continuance during limit ed period of powers to control production, supply and distribution of and trade and commerce in certain commodities detailed in Section 2 of the Act class-wise. Thus "Iron and Steel" were treated as classes of commodities. The object underlying the Act was to clothe the Government with sufficient and large powers for carrying out the purpose of the Act of maintaining or increasing supplies of, any essential commodity and of securing their equitable distribution and availability at fair prices." Thus though there was no actual war emergency then yet as an after-effect of the war which closely preceded the Act, conditions, as grave and emergent as war conditions prevailed. The object underlying the anterior war legislation was the object underlying this Act too and the word "Iron and Steel" used in that context and mentioned as a class distinguished the scope of the Act from that of Act No. 52 of 1952. It is the use. of the words "Classes of commodities" as used in Act No. 24 of 1946 which clenched the issue.

28. The third legislation viz. Act No. 10 of 1955 too apart from it being in pari materia with the aforesaid two legislations specifically and clearly included articles made of iron and steel within its ambit. The object underlying Act No. 52 of 1952 was a clamp restrictions on the legislative power of taxation of the States and the restriction in order to achieve uniformity of taxation in respect of goods declared essential under that Act and to prevent these goods being unduly taxed by the State legislatures.

29. These restrictive provisions therefore cannot be allowed to be widened by implications but must appear in precise and definite terms. If the Parliament intended to include articles made of iron and steel there is no reason why it should not have said so as it did in Act No. 10 of 1950.

30. The various authorities cited on behalf of the Petitioners cannot help to clarify the meaning of the terms in question as it is not safe to pronounce upon the provisions of one Act on the basis of the decisions relating to other Act. The last mentioned proposition is laid down in Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another,

31. The cardinal rule of construction should be observed as indicated by Das J., in Jugalkishore Saraf v. Raw Cotton Co. Ltd. (S) AIR 1955 SC 376 (M) to give to the words used by Parliament their plain and natural meaning unless it leads to absurdity and the language is susceptible of another meaning which is consistent with the object of the Act.

32. The Schedule contained in Act No. 52 of 1952 indicates that the legislature was aware of the various stages at which the essential goods may be and it considered the necessity of placing restrictions on States" power of taxation at those stages. Reference may be made to items 1, 2, 3, 9 and 13 in the Schedule.

33. Thus the words "Iron and steel" have one meaning and that is the commodities as metals and not articles made of them.

34. (1) Even if the words are held to have both a wider and narrower connotation, the latter should be preferred as the provision has a reference to exemption from taxation which should be construed in favour of the State.

(2) Assuming that Act No. 52 of 1952 is meant to include within its ambit articles made of iron and steel yet since the Act was subsequent to Madhya Bharat Sales Tax Act 1950, it cannot affect the provisions of that Act. u/s 5 of the Madhya Bharat Sales Tax Act the policy of taxation was laid down and the Government was to fill in the detail. The function was ministerial rather than legislative. Therefore the promulgation of Notification No. 59 dated 24-10-1953 cannot be affected by the declaration of "Iron and Steel" as goods essential to the life of the community.

(3) Even assuming that Notification No. 59 of 34-10-1953 is a new law for certain purposes it is not new for the purpose of articles of iron and steel such as are in question as the new notification makes no change in respect of the rate of tax but continued it as it was. There is therefore no new law made and the declaration under Article 286(3) by Act No. 52 of 1952 will not affect the taxability of the goods in question.

(4) The argument, that the repeal of earlier Notification No. 3 of 1950 by Notification No. 59 of 1953 Stands but not the tax, cannot be allowed to prevail. Such a result will follow if the position with regard to repeal in so far as it refers to goods in question is allowed to be served from the taxing provision. For, thus severing the true test is the Intention of the legislature. If the intention of the legislature is to continue the tax, the repealing provision cannot be used contrary to that intention. In such a case the whole, if at all will be considered to be invalid and the Notification as a whole will be null and void. The effect will be that the initial Notification No. 3 of 1950 will stand good and the goods in question will be taxable under it.

35. On consideration of these respective view points, I am inclined to hold that the words "Iron and Steel" as used in Act No 52 of 1952 do not embrace articles made of iron and steel in which the Petitioners deal and further I am also of the opinion that even if they are held to include such articles yet that Act will not affect the question of their taxability under Madhya Bharat Sales Tax Act of 1950.

36. I propose to give my reasons in that as follows:

I shall take for consideration the first of the two questions formulated by me earlier.

(1) Whether the words "Iron and Steel" in Act No. 52 of 1952 include, within their ambit, articles made of iron and steel such as are in question.

37. On behalf of the Petitioners support is sought to be derived for the view that

the words "Iron and Steel" include articles made of them upon the two pieces of legislations which precede Act No. 52 of 1952 and one which follows it and all of which in a way deal with "goods essential for the life of the community". But the questions which arise for serious consideration are how far we can derive support from these three legislations to find out the meaning of these terms in Act No. 52 of 1952 and whether there is nothing in them to indicate their exact scope and significance. Although all these legislations deal in a way with "goods which are essential for the life of the community, yet the legislations are made to serve totally varying objects. I will advert to this at a later stage.

38. I shall first consider what Acts are in *pari materia* and if the Acts are in *pari materia* how are they to be construed.

39. Maxwell in his *Interpretation of Statutes* at p. 33 quotes observations of Lord Mansfield in *R. v. Laxdale* 175 B-1 Burr 445 at p. 447 (N) which are as follows:

Where there are different statutes in *pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other.

But as observed by Lord Russel of Killowen in *R. v. Titterton* 1895-2 QB 61 (O) "it is proper to refer to earlier Acts in *pari materia* only where there is an ambiguity".

40. The phrase *pari materia* is explained by Hosmer J. in *United Society v. Eagle Bank* 1829-7 Conn. 457 (P) as follows:

The statutes are in *pari materia* which relate to the same person or thing or to same class of persons or things. The word *PAR* must not be con founded with the word *similis*. It is used in opposition to it, as in the expression *MAGIS PARIS SUNT QUAM SIMILIS*, intimating not likeness merely, but identity. It is a phrase applicable to the public statutes or general laws made at different times in reference to the same subject.

Thus where different statutes deal with identical subjects at different times or deal with a per son or thing for same purpose they are in *pari materia* and they should be taken and considered together as one system and as explanatory of each other.

41. In order therefore to consider what assistance can be derived by us in construing words in Act No. 52 of 1952 we will have to examine the language of the two prior Acts and one subsequent Act and the purpose underlying each of those statutes. The Petitioners' contention will be worth consideration if the earlier legislations are in *pari materia* and the subsequent Act can be construed to be parliamentary exposition of the meaning and scope of the terms "Iron and Steel" used therein.

42. The first legislation to be considered is "Iron and Steel" (Control of Production and Distribution Order 1941. This order was made by the Government

in pursuance of the power considered upon it under Defence of India Act 1939. At the time of issue of this Act grave (sic) existed and by Section 2(1) of the Act power was conferred upon Central Government to make inter alia such rules as it may deem fit for (sic) essential to the life of the community. Rules were made in pursuance of these powers known as Defence of India Rules. Rule 181 (2) was made in this connection.

Even at this stage no restriction was made as regards category of goods intended to be covered by the Rule. Then followed among others the Iron and Steel (Control and Distribution) Order 1941 which is material for our purpose. Under this large powers were conferred regarding control and distribution of what may conceivably be material for the life of the community, public safety, defence of India or efficient prosecution of war. The Order was made applicable not to bare "Iron and Steel" but to categories of iron and steel specified in the Schedule attached to the Order. The word "Iron and Steel" were not considered plain, enough to include every article made of iron and steel but had to be circumscribed by the "definition appearing in the Schedule.

43. The language of the Order of 1941 thus is not similar to that of Act No. 52 of 1952 although both deal with the goods essential to the life of the community. Besides this the object underlying both the statutes are (sic). In making the Order of 1941 it was intended to confer large and extensive powers upon Government to control production, supply distribution of commodity comprehensively named as "iron and steel" of which categories were specified in the Schedule. Every product of iron and steel which could conceivably advance the object of the Act, the Rules and the Order thereunder were included in these categories without leaving any loon-hole. What is the purpose or object underlying Act No. 52 of 1952 will be dealt with after I have examined all the three pieces of legislations as above.

44. Coming to Essential Supplies (Temporary Powers) Act 1946 it appears from Section 3 of the Act that the object of the Act is to enable Government to regulate or prohibit the production supply and distribution of and trade and commerce in commodities mentioned in the Act for the purpose of maintaining or increasing their supplies or for securing their equitable distribution and availability at fair price.

In pursuance of powers under the Act various Orders and Notifications are issued out on which those material for our purpose is Iron Steel and Scrap Control Order 1943. This indicates that the words "Iron and Steel" were used to include categories mentioned in the Schedule attached thereto. The Schedule is sufficiently wide to include practically all the goods in question.

However while specifying and enumerating the goods essential to the life of the community, the expression "class of (sic) was used. The words "Iron and Steel" appear to have been (sic) not merely to (sic) metals but also classes of materials made of those materials in the sort which may have (sic) bearing on the object

underlying the Act (sic) maintaining supplies and securing equitable distribution and availability at fair prices of essential commodities mentioned in the Act class-wise.

45. The third piece of legislation referred to and relied upon is subsequent to the Act No. 52 of 1952. This is adverted to probably as parliamentary exposition of the meaning underlying the terms "Iron and Steel" as used in Act No. 52 of 1952. This subsequent Act is Act No. 10 of 1955 known as Essential Commodities Act No. 10 of 1955. This Act was intended to provide, in the interest of general public, for the control of production, supplies and distribution of and trade and commerce in certain essential commodities specified in the Act.

By Section 2-VI it mentions "Iron and Steel" including manufactured products of iron and steel "as one such commodity". It is thus clear that the Act itself indicates that the words "Iron and Steel" are used to indicate not merely metal but also manufactured products of all sorts of Iron and steel.

46. It is thus clear by reference to all the three aforesaid legislations which are more or less *In pari materia* inter se the wider connotation is indicated in the Act itself. Iron and Steel (Control of Production and Distribution) Order, 1941 uses the term "Categories of Iron and Steel". Act 24 of 1946 uses the words "Classes of commodities and in that sense signifies "Iron and Steel" as a class and Act No, 10 of 1955 clearly mentions manufactured products of iron and steel" as being included in the term "Iron and Steel". Thus in all the three legislations wider connotation is clearly indicated in them and it is not necessary to travel outside these legislations to find out the exact scope of the terms "Iron and Steel".

47. Besides this there is this further fact that these pieces of legislation cannot be taken as aid to establish that the words "Iron and Steel" in Act No. 52 of 1952 are used in their wider connotation to include everything that could fall under those legislations. The reason is that the objects underlying these pieces of legislation on the one hand and Act No. 52 of 1952 on the other are entirely different.

The first mentioned group of legislation intends to confer power upon Government to regulate or prohibit production, supply and distribution of the essential commodities in order to maintain their supplies and to secure their equitable distribution and availability at fair prices. Large powers are given and wider net is cast to ensure that the object behind them is not frustrated. The names of commodities are used class-wise or group-wise or clear indication is given as to what is meant by the terms used. While in the case of Act No. 52 of 1952 the object is to select commodities for their being declared as essential for the purpose of Article 286(3) of the Constitution in order to clamp restriction on States' powers of imposing tax on sale or purchase of such goods.

As the Act is directed towards forging fetters on ordinarily wide powers exercisable by the States under Entry 54 of list 11 for the purpose of replenishing their finances, it is presumed to do so in precise terms, not casting the net too

wide by introducing terms with wide connotation.

48. Further on examining the list of articles mentioned in Act No. 52 of 1952 it appears that where words with wider connotation are intended to be used such as cereals and pulses, fresh and dried fruits and vegetables, fresh milk and milk products, etc., exact forms, which these products take at different stages and which are to be included within their ambit, are clearly indicated. This is not so with respect to Iron and Steel or with respect to "Hides and Skins".

49. Thus both the difference in the language used with reference to these terms in the two groups of legislation as well as the difference in the object underlying them go to show that the words "Iron and Steel" in Act No. 62 of 1952 are not meant to include anything made of iron and steel. Even the learned Counsel for the Petitioners were not prepared to go so far as to suggest that they should include—even machine goods made of iron and steel.

If the Words "Iron and Steel" had been intended to include all the articles made of iron and Steel as are mentioned in the Schedules pertaining to two earlier pieces of legislation or all articles manufactured of iron and steel as referred to in Act No. 10 of 1955 it was unnecessary to use any other expression than the bare words "Iron and Steel" in all those three legislations.

The very fact, that where terms are used to denote categories specified or class indicated of the family of those metals in those legislation—it was specifically said so clearly—suggests that, where there is nothing in the Act to indicate that anything more than the metal was meant, we cannot bring in other things by process of interpretation.

50. On all these considerations it is not correct to interpret terms "Iron and Steel" in Schedule to Act No. 52 of 1952 to mean all kinds of goods" in which the Petitioners deal. While so construing it is correct to say, as was urged by the learned Counsel for the Petitioners, that the very Object of the Act will be frustrated? I think not.

51. To my mind it is not, correct to determine what is exact connotation of the terms "Iron and Steel" for the purpose of Act No. 52 of 1952 by finding out what things made of iron and steel are commonly required by common men or by large section of the community. It may be that wires, plates, wire-nails, angles, heavy structural etc., are so required but from this requirement we can not reason back and say that all these are included in the ambit of these terms.

52. My answer therefore to the first question is that, the words "Iron and Steel" in Act No. 52 of 1952 do not include within their ambit articles made of iron and steel such as are in question. It may be stated here that the dictionary-meaning of these terms is not inconsistent with this interpretation. The argument, therefore, that the Notification; No. 58 dated 24-10-1953 is consistent with the wider meaning and No. 59 of 24-10-1953 is Inconsistent with Article 286(3) of the Constitution read with Act No. 52 of 1952 and is therefore null and void, is

not sustainable.

53. There is another difficulty in the way of the. Petitioners. This arises due to my conclusions on question II formulated by me.

54. We have held in the case reported in Madh BLR (1956) Civil 204: (S) AIR 1956 MP 214) (A) that declaration of essential goods under Article 286(3) of the Constitution by Act No. 52 of 1952 will not effect Sales Tax legislations prior to that Act. Act No. 30 of 1950 under which the notifications No. 3 of 1950 and No. 59 of 24-10-1953 were issued became operative from 1-6-1950. The tax levied under that Act cannot be affected by subsequent decimation of the goods referable to that tax under Article 286(3) of the Constitution.

Article 286(3) of the Constitution is as follows:

No law made by the (sic) of a State Imposing, or authorising the (sic) 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". It is clear from the wording of this clause that it is the law made by the Legislature of a State subsequent to the declaration under Article 286(3) of the Constitution which will be rendered inoperative in the absence of anything to show that it was reserved for the consideration of the President and had received his assent. The term Legislature of a State is defined and explained in Article 168 for Part A States and in Article 168 read with Article 238(7) for Part B States.

According to these provisions Legislature of the State of Madhya Bharat consists of Raj Pramukh and the Legislative Assembly of Madhya Bharat. The restrictive provisions of Article 286(3) of the Constitution hits the legislation made by the legislature of the State made subsequent to the declaration under Article 286(3) of the Constitution and the subordinate legislation made under a prior status is in no way affected.

55. Moreover the Notification No. 3 of 1950 validly imposed tax at Rs. 3-2-0 per cent on the goods in question. The notification No. 59 does not bring in any change but supersedes the earlier Notification and reimposes the same tax. There is therefore continuity in the matter of tax without any change. The legislative intent is clearly one of continuation and in these circumstances it is not reasonable so to construe as to destroy that intention.

If the same legislation repeals and re-enacts, sometimes, having regard to a particular legislative intent, repealing provision may be severable from that of re-imposition and the former may be given effect to if valid, leaving the latter to be invalid if it is beyond jurisdiction. But if such severance is contrary to legislative intent then the entire legislation will be rendered invalid.

56. Crawford at page 657 of his book on construction of statutes observes in Section 322 as follows:--

Often the legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the same enactment re-enact all or certain portions of the pre-existing law. Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statute. Are these rights and liabilities destroyed or preserved? The authorities are divided as to the effect of simultaneous repeals and re-enactments.

Some adhere to the view that the rights and liabilities accruing under the repealed Act are destroyed, since the statute from which they sprung has actually terminated, even though for only a very short period of time. Others, and they seem to be in majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the re-enactment neutralizes the repeal, thereby continuing the law in force without interruption.

Logically, the former attitude is correct, for the old statute does not cease to exist as an independent enactment, but all practical considerations favour the majority view. This is so even where the statute involved is a penal Act." I am inclined to fall in line with the majority-view referred to above.

57. My answer to the second question therefore is that even if the words "Iron and Steel" in Act No. 52 of 1952 are held to be wide enough to include articles made of iron and steel yet, in view of the fact that the subsequent Notification cannot be said to have been made by the legislature of the State and in view of the fact that Madhya Bharat Sales Tax Act was passed before Act No. 52 of 1952 and the rate of tax with respect to this item in Notification No. 3 of 1950 issued under the Madhya Bharat Sales Tax Act was continued by the subsequent Notification No. 59 of 1953 the chargeability of those goods is not affected, by reason of Act No. 52 of 1952.

58. It remains to refer to some of the decisions relied upon by either side in order to find to what extent the same are applicable to the line of reasoning adopted by me above or are contrary to the same.

59. Before adverting to them I may mention here observations of the Supreme Court in *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another*, to the following effect:

It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act. with reference to decisions dealing with other Acts which may not be *in pari materia*". with this principle in mind I shall consider some of the authorities which to my mind ought to be referred.

60. In *Tomco Sales Department Kingsway Nagpur v. State* 1952-3 STC 463 (Q) the question was whether cocogem is included within the term vegetable oil. It was held that it is purely of vegetable as opposed to animal origin and the mere fact that in the course of its manufacture the raw material is subjected to highly

complicated process of refinement does not affect the character which it deserves from its origin. In that case on facts it was held that a commodity in truth and substance was a vegetable oil. This case can hardly be of any assistance in the pre-sent case.

61. In (1953) 4 STC 337 (Hyd) (H), the question was whether the word "Rice" includes "Polao or Cooked rice" in the exemption list. It was held "that it did not include the same.

62. In the two Canadian cases reported in -1951 CLR 122 (J) and 1952 CLR 91 (K), questions were, whether particular words used in the Schedule relating to Excise Act in that State whether particular article in question in those cases fell within the category of goods included in the Schedule. This can hardly be of any assistance in this case.

63. In AIR 1954 Gau 170 (G), the question was whether all forms of rice in the exemption list under the Sales Tax legislation in that State included "Chira" and "Muri". It was held that all forms of rice so long as it does not lose its original shape and character of cereal will be included within the exemption list in view of the word "used in the exemption list. This case too Cannot help us.

64. The case: which may leud some assistance in this case is one reported in M.A. Ganapathy Iyer v. Hyderabad State AIR 1954 AP 94 (R). This was cited by the learned Advocate General.

65. The question raised in that case was that when rice was mentioned as one of the items in the exemption list of articles which were ex empted from sales tax under Hyderabad Sales Tax" Act 1950, it should include all forms or pro duce of rice such as (sic) and Dosas". It was held that exemption cannot be claimed by analogy or a priori reasoning but claim to it must be strictly made out.

It was also held in that case that it is a fallacious argument to say that the essential goods mentioned in Act No. 24 of 1916 are the same as the essential commodities necessary for the life of the community mentioned in Article 286(3) of the Constitution. Although the matter was not discussed in details in that case it does show that the goods declared as essential under Article 286(3) of the Constitution cannot be equated with those which are mentioned in the Essential Supplies (Temporary Powers) Act.

66. Other cases cited on either side have no direct bearing.

67. In the view I take on the two questions formulated by me for consideration, as discussed above, the petitions cannot be sustained They are hereby rejected

68. Under the circumstances of the case parties will bear their costs.

Samvatsar, J.

69. I agree.