

Harishchandra

Vs

State of Madhya Pradesh

Criminal Appeals Nos. 211 to 217 of 1962

(R. S. Bachawat, A. K. Sarkar, N. Rajgopala Ayyangar JJ)

24.09.1964

JUDGMENT

AYYANGAR J.

These seven appeals are connected as they relate to the same appellant and the point involved in each is identical. They are before us by virtue of special leave granted by this Court and are directed against the common judgment of the Indore Bench of the High Court of Madhya Pradesh convicting the appellant of a contravention of the Indian Iron & Steel (Scrap Control) Order, 1943.

The accused, the appellant before us, was the President of the Scrap Dealers Association at Indore and he was prosecuted before the learned Additional City Magistrate, Indore City in seven sets of criminal cases filed by the State of Madhya Pradesh alleging contravention of s. 8(4) of the Iron & Steel (Scrap Control) Order, 1943 by selling or causing to be sold scrap iron to different customers on different dates at a rate higher than was authorised by notification dated September 30, 1952 issued by the Steel Controller under the said order. He was acquitted by the Additional City Magistrate but on appeals preferred by the State Government, the learned Judges set aside the acquittal and convicted him of the offences and sentenced him to pay a fine of Rs. 100 in each case with imprisonment in default of payment of fine. It is the correctness of this judgment of the High Court that is canvassed before us by the appellant in these appeals.

To appreciate the points raised by the appellant it is necessary to narrate briefly the history of the legislation on the topic of control over the price at which scrap was permitted to be sold by dealers. The Defence of India Act, 1939 enabled the Central Government to frame rules, among others, "for maintaining supplies and services essential to the life of the community (vide s. 2)." In pursuance thereof Rule 82(2) of the Defence of India Rules empowered the Central Government "so far as appears to them to be necessary or expedient for ..... maintaining supplies and services essential to the life of the community" to provide by order, inter alia, (a) for controlling the prices or rates at which articles or things of any description whatever may be sold ..... and for relaxing any such prices or rates." By virtue of this power, the Central Government promulgated the Iron & Steel (Scrap Control) Order, 1943 (hereinafter referred to as the Indian Scrap Order) on February 25, 1943. This Order to whose provisions we shall have to make some reference later would normally have lapsed on the expiry of six months after the revocation of the proclamation of emergency because of the provisions of s. 102(3) (a) of the Government of India Act, 1935. In order to avoid this result, the Emergency Provisions Continuance Ordinance, 1946 was promulgated on September 25, 1946 which continued several orders in relation to the control of production, distribution etc. of essential commodities, and Indian Scrap Order among them, and this ordinance was replaced by a permanent legislation-the Essential Supplies (Temporary Powers) Act, 1946 (Act 24 of 1946) which

also contained a provision for the continuance of the Control Orders in force [vide s. 17(2)]. Section 8(4) of the Indian Scrap Order prohibited the sale of scrap in excess of the prices fixed therefor by the Controller. It is not disputed that the sales in regard to which the appellant has been prosecuted were in excess of the maximum there specified.

Several defence were raised but of these those which now survive are only two : (1) The legal effect of the parallel provisions on the same subject viz., control over the sale price of scrap which were in force in the Part B State of Madhya Bharat which comprised Indore, and (2) Whether the appellant as the President of the Scrap Dealers Association which was an unincorporated body could be held liable for a sale in excess of the authorised maximum price effected by a Munim or Munims of the Association.

We shall now proceed to narrate in brief outline the history of the parallel provisions relative to control over the sale price of Scrap in the Part B State of Madhya Bharat. These provisions undoubtedly continued in force in the State till September 12, 1950 when the Indian Scrap Control Order, 1943 was in terms made applicable in that State and the principal point raised by Mr. Agarwala was whether a certain notification which has been issued under the State law and was in force on that date continued in force even thereafter. The State legislation on this topic started on October 9, 1948 with the promulgation of the Madhya Bharat Essential Supplies (Temporary Powers) Ordinance, 1948, which was a reproduction of the Indian Essential Supplies. (Temporary Powers) Ordinance, 1946. When this Ordinance was replaced in India by the Essential Supplies (Temporary Powers) Act, 1946, the same process was repeated in Madhya Bharat by the enactment of the Essential Supplies (Temporary Powers) Act (Samvat 2005) (Madhya Bharat Act III of 1948). Among the "essential commodities" dealt with by the State enactment were iron and steel [vide s. 2(3)(7)]. Section 4 of the Act read :

"4. Powers to control production, supply, distribution etc., of essential commodities.  
(1) The Government so far as it appears, to it to be necessary or expedient for maintaining or increasing supplies of any essential commodities, or for securing their equitable distribution and availability at fair prices may by an Order notified in the Official Gazette provide for regulating or prohibiting the production, supply, distribution and movement thereof, and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made there-under may provide :

#.....##

c) For controlling the prices at which any essential commodity may be bought or sold;

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to quote only the material words. In exercise of the powers thus conferred the Director of Civil Supplies, Madhya Bharat to whom the powers in that behalf were delegated by the State Government, promulgated on June 4, 1949 the Madhya Bharat Iron, Steel and Scrap (Production, Procurement and Distribution) Control Order, 1949. Clause 5 of this Order empowered the Director of Civil Supplies, Madhya Bharat to specify from time to time the maximum prices - wholesale and retail - at which "iron and steel, scrap or specified articles made thereof" may be sold (a) by a

producer. (b) by a controlled stockholder, (c) by a registered stockholder (d) by a controlled dealer and (e) by a scrap merchant. The several categories of persons whose sales were thus regulated were defined in the Order. Acting under this provision, the Director Civil Supplies issued a notification on the same date - June 4, 1949 - which read :

"In exercise of the powers conferred on the Director under clause 5(1) of the Madhya Bharat Iron, Steel and Scrap (Production, Procurement and Distribution) Control Order, 1949, I hereby specify that the Price Schedules as may be in force for the time being under ..... Iron and Steel Scrap Control Order in the Indian Union in respect of sales by producers, controlled and Registered Stockholders and Scrap Merchants shall apply mutatis mutandis to sales by the aforesaid persons in Madhya Bharat; provided however, that the Registered Stockholders shall sell to Controlled Dealers at II column rates of the Government of India Price Schedule for the time being in force, that Iron and Steel which they receive at column I rate from the producers and at column III rate, that Iron and Steel which they receive from the Controlled Stockholders at column II rates : provided also that controlled Dealers in Madhya Bharat shall sell to consumers at a profit margin of not exceeding Rs. 30 per ton; subject however, in all cases to such local extra charges as may be fixed by me or the officers authorised by me in this behalf."

It is only necessary to add that there were similar Orders passed under the Indian Scrap Order, 1943 in which also the classification of dealers etc., proceeded on the same lines. The form of the notification by the Steel Controller to the Government of India, referred to in this notification was on the following lines :

There was a schedule to the notification fixing the maximum prices and it was divided into five columns. First was the number of the item, the second was the description or classification of the material and the next three which were headed columns I, II and III dealt with specified maximum basic prices per ton for sale at Calcutta, Bombay and Madras. There were adjustment indicated for arriving at the prices chargeable at other centres. Column I specified the prices for sales by Controlled sources other than those mentioned in column II. The second column was headed "specified prices fixed for sales by scrap merchants who have been declared controlled sources" and the last or third column specified the maximum for sales by all persons other than those mentioned in columns I and II. Different maxima were fixed for sale by persons falling under the three columns, the first column price being the lowest, the second a little higher and the last which included sales by retail dealers to the consuming public being the highest. It is common ground that the Scrap Dealers Associations, Indore of which the appellant was the President had been declared "a Controlled Source" so that the maximum prices at which members of the Association which was an unincorporated body could sell, were those specified in column II of the schedule. It is not necessary to set out the prices at which the actual sales which were stated to be in violation of the law, took place, but it is sufficient to state that admittedly the servants of the Association sold scrap iron at prices higher than those fixed in column II and at prices fixed for column III.

The first submission of Mr. Agarwala learned Counsel for the appellant was that the sale by the Association at the column III price was authorised and legal because of a notification issued by the Government of Madhya Bharat dated August 26, 1949. The principal point argued before us in respect of this notification is as to whether this notification was alive and in force on the date of the sales in 1956 which were the subject of the several prosecutions and whether it has survived subsequent Indian legislation extended to the State to which we shall advert presently. But before proceeding to do so, it would be convenient to consider the nature of that notification.

The Scrap Dealers Association of Madhya Bharat appear to have made a representation to the State Government that though the dealers in Scrap as constituent units of the Association were treated as a Controlled Sources and secured advantages thereby and were bound to sell at prices fixed in column II, still the Association should be accorded special privilege and be permitted to sell at prices fixed for the residuary class of dealers in column III. This representation was considered by an Advisory Committee appointed by the State Government and a direction was given that "a change be made to the extent that at present of the goods which is sold to consumers by the Scrap Association at the regional headquarters they will be allowed by charge column III rates on the goods instead of column II rates." It is stated that the Association has been selling at these rates ever since. There is no doubt that if this direction stood, and we need only add that the validity of this direction was not challenged by the respondent as beyond the powers of the State Government, the appellant could not have been guilty of the offence with which he was charged.

But the question is whether this direction or this modification of the prices fixed under s. 5(1) of the Madhya Bharat Scrap Control Order by incorporating the notification by the Steel Controller of the Government of India in its text, subsisted in 1956 when the sales which are stated as being in contravention of the Indian Scrap Order, took place.

We have already seen that the notification dated June 4, 1949 which we have extracted earlier, was issued under the Madhya Bharat Iron and Steel etc., Control Order, 1949 promulgated under the Madhya Bharat Essential Supplies (Temporary Powers) Act, 1949. The Madhya Bharat Act, however stood repealed by virtue of the provisions of the Essential Supplies (Temporary Powers) Amendment Act, 1950 (Act 52 of 1950) under which the Essential Supplies (Temporary Powers) Act, 1946 was extended to the Part B States as and from such dates as might be specified by the Central Government. By a notification issued by the Central Government the Essential Supplies Act, 1946 was made applicable to the Part B State of Madhya Bharat from August 17, 1950. The effect of this extension was provided for by s. 10 of Act 52 of 1950 which enacted :

"10. Amendment of section 17, Act XXIV of 1946. After sub-section (3) of section 17 of the said Act, the following sub-section shall be inserted, namely :-

(4) If immediately before the day on which this Act comes into force in a Part B State, there is in force in that State any law which corresponds to this Act, such corresponding law shall on that day stand repealed in so far as it relates to any of the essential commodities governed by this Act :

Provided that any Order made and in force immediately before that day in the said State shall continue in force and be deemed to be an Order made under this Act. and all appointments made, licences or permits granted, and directions issued, under any such Order and in force immediately before that day shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act."

If the main part of sub-s. (4) stood alone without the proviso, the effect would have been not merely a repeal of the Madhya Bharat Essential Supplies (Temporary Powers) Act, 1948 which was "a corresponding law" which was in force in that State, but with that repeal, all the subordinate legislation enacted thereunder including the Control Orders as well as the Orders of the Director fixing prices would also have stood repealed. By virtue of the proviso, however, notwithstanding the repeal of the parent enactment, the Orders made under it were continued and were to be deemed to have been made under the Indian Act.

Mr. Agarwala laid considerable stress on the proviso and urged that by reason of its language it continued in force not merely the Madhya Bharat Scrap Order of June 4, 1949 and the price fixation by the Director under s. 5(1) of that Order on the same date, but also the variation in the prices to be charged by the Association effected by the Government Order dated August 26, 1949 which enables that body, notwithstanding its being a dealer specified in column II to sell at prices fixed for persons falling under column III. We need not pause to consider whether the direction or the notification dated August 26, 1949 is "a direction issued under any such order" within the proviso to s. 17(4) but shall proceed on the basis that it is, accepting the construction suggested by learned Counsel. But the replacement of the Madhya Bharat law on this topic by the law in force in India did not stop with that effected by Act 52 of 1950. By a notification of the Government of India dated September 12, 1950. the Indian Scrap Order, 1943 was extended to Madhya Bharat. It is really the legal effect of this extension that calls for scrutiny in these appeals.

The notification by which the Indian Scrap Order was extended to Madhya Bharat, no doubt, did not expressly provide for the repeal of the "Madhya Bharat Scrap Iron & Steel etc., Order, 1949", but if the two Control Orders cannot operate simultaneously, it would be obvious that the Indian Scrap Order would have repealed and replaced the State law. In the first place, even if the provisions contained in the two sets of Orders were in identical terms, it might be proper to hold that the Indian Scrap Order replaced the State law in order to give some meaning and effect to the extension of the Indian Scrap Order to Madhya Bharat. But that is not the position here. There are marked differences between the provisions of the two Orders such that it would not be possible for the two to stand together. For instance, Rule 3 of the Indian Scrap Order prohibits producers from acquiring or agreeing to acquire scrap except and in accordance with a written order of the Controller etc. There is no rule corresponding to this in the Madhya Bharat Scrap Order. In line with this, in Rule 6 of the Madhya Bharat Order which corresponds to Rule 8(4) of the Indian Scrap Order, there is no prohibition against acquisition for a higher price than the maximum fixed, such as is to be found in Indian Order. Again, Rule 7 of the Madhya Bharat Order relating to the restrictions on the movement of scrap has no corresponding provisions in the Indian Scrap Order. Illustrations of this type of variation may be multiplied, but this is unnecessary as it was conceded that the provisions contained in the two orders were not identical. What we desire to emphasise is that the two orders, though achieving substantially the same object, are not identical in their provisions. If that is so, it is obvious that on the extension to Madhya Bharat of the Indian Scrap Order, the Madhya Bharat Scrap Order would stand repealed and be replaced by the Indian law.

Mr. Agarwala, however, submitted that this would not follow because according to him the Madhya Bharat Scrap Order had some sort of higher efficacy or stood on a footing superior to the Indian Scrap Order by reason of its having been continued by the proviso to s. 17(4) to Act 24 of 1946, the argument being that the notification etc., should be deemed to be one under the Essential Supplies (Temporary Powers) Act itself. This argument, even if sound, does not really help the appellant, for the Indian Scrap Order itself was preserved by a saving of the same type and couched in exactly the same language in the Essential Supplies (Temporary Powers) Ordinance, 1946 and the Act of the same name of 1946 [vide s. 17(2) & (3) of Act 24 of 1946]. Besides, just as an order made or notification issued under the Essential Supplies (Temporary Powers) Act, 1946 could be amended, modified or cancelled, even if the Madhya Bharat Scrap Control Order and the notification issued thereunder are deemed to have been passed under the Act of 1946 which is what learned Counsel contends, they could surely be modified, amended or replaced by other subordinate legislation originating from the same parent Act. The Indian Scrap Order, 1943 was one such, because it is deemed to have been made under that Act. When the Indian Scrap Order was extended to Madhya Bharat, the result was that it effectively replaced the Madhya Bharat Order on the same topic.

Even granting that the Madhya Bharat Scrap Order of June 4, 1949 was repealed on the extension to that territory of the Indian Scrap Order, Mr. Agarwala urged that the direction contained in the notification of the State Government dated August 26, 1949 was a special law which stood unaffected by the extension of the Indian Scrap Order to Madhya Bharat. That when the Indian Scrap Order was extended it carried with it the notification issued by the Controller from time to time and that after the extension of the Scrap Order to Madhya Bharat, all sales of scrap would have to be effected only in conformity with the prices fixed by the notifications issued under the Scrap Order was not contested. Nor was it disputed that on the terms of the notifications issued fixing the prices at which several classes of dealers might effect sales under the Indian Scrap Order, the Association of which the appellant was the President would have fallen under column II and would have been bound to sell scrap only at the prices fixed in that column. But it was submitted that the fact that even before the extension of the Indian Scrap Order to Madhya Bharat in September, 1950 under the very provisions of the notification dated June 4, 1949 itself the maximum prices fixed in Madhya Bharat were only those prescribed by the Controller in India and that the deviation in regard to these prices permitted to the Association was thus in effect a local modification of the Indian Order and that consequently the direction issued by the State government on August 26, 1949 and which was continued even after the repeal of the Madhya Bharat Temporary Powers Act, 1948 by reason of the proviso to s. 17(4) of the Act 24 of 1946 was not affected by the extension of the Indian Scrap Order to Madhya Bharat. We find ourselves unable to accept this argument. The concession allowed to the Association by the notification dated August 26, 1949 could be looked at from one of two alternative positions. The direction could be viewed as in effect a modification of the prices fixed under s. 5(1) of the Madhya Bharat Order by the Director so that in law it should be deemed to have been incorporated in that price fixation and became, as it were, the price fixed by the Controller. The effect of this would be that in Madhya Bharat before the extension of the Indian Scrap Order, the maximum prices chargeable by the specified type of dealer falling under column II would be those applicable to dealers in column III. If this were the true position, the result would be that when the Indian Scrap Order was made applicable to Madhya Bharat without a saving or special provision as regards sales by the Association, it would supersede that law and the special classification effected by the Madhya Bharat law would cease to be in force. In this respect the fact that the prices fixed in Madhya Bharat for sales by dealers etc., specified in the three columns corresponded to those fixed by the Controller in India, would be wholly irrelevant, for the authority by which the fixation was effected would be traceable to Madhya Bharat and not the Indian law.

The other alternative would be that the notification dated August 26, 1949 was an independent piece of subordinate law-making under the Essential Commodities Act and the Madhya Bharat Scrap Order, and it was this aspect that was stressed by Mr. Agarwala. Even if that be so, the appellant would derive no advantage from this, because there has been a repeal not merely of the Madhya Bharat Essential Supplies Act no doubt with a saving but of the Madhya Bharat Scrap Order without a saving and on the repeal of the Scrap Order under which the subordinate rule or regulation was effected the latter would also stand repealed. As explained by Lord Reading C.J. in *Watson v. Winch* ([1916] 1 K.B. 688, 690) :

"It has been long established that, when an Act of Parliament is repealed, it must be considered (except as to transactions passed and closed) as if it had never existed ..... It would follow that any bye-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provision preserving the validity of the bye-law notwithstanding the repeal."

Admittedly, there is no saving clause either in the notification of the Central Government by which

the Indian Scrap Order was extended to Madhya Bharat nor, of course, in the Scrap Order itself. As the parent order under which the notification was made has been repealed without a saving, the effect must be that the notification dated August 26, 1949 must, if it were held to be an independent subordinate legislation, be held also to have been repealed. Mr. Agarwala next referred us to s. 24 of the General Clauses Act No. X of 1897 and urged that the notification would be a bye-law that would have continued notwithstanding the repeal of the Madhya Bharat Scrap Order. Section 24 of the Central Clauses Act runs thus :

"24. Where any Central Act or Regulation, is after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order scheme, rule form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under s. 5 or 5A of the Scheduled Districts Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."

We consider that this submission is entirely without force. Mr. Agarwala fairly conceded that the language of s. 24 would not cover a repeal of the Madhya Bharat Scrap Order by the introduction into the Madhya Bharat territory of the Indian Scrap Order, 1943, but he suggested that even though the section was in terms inapplicable, he could invoke the principle underlying it. But this argument, however, proceeds on assuming and that even in the absence of s. 24 the same principle of law would apply. The position apart from a statutory provision such as is found in s. 24 of the Central Clauses Act, is thus summarised in Craies on Statute Law 6th Edn. 334 :

"If the statute under which bye-laws are made is repealed, those be-laws are impliedly repealed and cease to have any validity unless the repealing statute contains some provisions preserving the validity of the bye-law notwithstanding the repeal. This follows from the rule ..... when an Act of Parliament is repealed it must be considered (except to transactions passed and closed) as if it had never existed."

This submission has, therefore, no merit and must be rejected.

The second of the points urged by Mr. Agarwala was that the Scrap Dealers Association was an unincorporated body consisting wholly of retail dealers and that as each of them individually was a dealer who could himself have sold at the column III rate, the Association could not be penalised for selling at that rate. As an unincorporated body, he submitted, it was merely the aggregate of its members and so would have the rights of its constituent units. There is no force in this point either. Apart from the definition of "person" in the General Clauses Act as including an unincorporated body of persons, what we are concerned with is not sales by individual dealers who composed the Association, but sales by and through the Association. It was the Association that was given the facility of obtaining scrap at more favourable prices than dealers and it was that body which was subjected to control in the shape of having to sell what it had purchased from controlled sources at

the prices specified in column II.

Lastly, it was faintly, urged by Mr. Agarwala that the appellant was merely the President of the Association and could not be held liable for the sales effected by its employees. There was no dispute that the sales were by the Association and at prices fixed by that body. It was also admitted that these prices were in excess of the prices specified for sales fixed for the Association. Under s. 8 of the Essential Supplies (Temporary Powers) Act, 1946, "Any person who abets the contravention of any order ..... shall be deemed to have contravened that order." In the circumstances, we do not see how this affords any defence to the appellant.

The result is that these appeals fails and are dismissed.

Appeals dismissed.

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