

# ALLAHABAD HIGH COURT

Commissioner, Sales Tax

Vs.

Ram Bilas Ram Gopal

Sales Tax Ret No. 587 of 1966  
(R.S. Pathak, M.H. Beg and R.L. Gulati, JJ.)

26.02.1969

## JUDGMENT

**Pathak, J.**

1. The assessee deals in foodgrains and oil-seeds at Maudaha in the district of Hamirpur. He supplied food-grains to the Regional Food Controller under the U. P. Wheat Procurement (Levy) Order, 1959. The turnover of food-grains so supplied was assessed to sales tax under the U. P. Sales Tax Act. On appeal by the assessee, the Assistant Commissioner (Judicial) Sales Tax, excluded that turnover from assessment. The Additional Judge (Revisions) Sales Tax upheld the exclusion, holding that the supplies effected by the assessee to the Regional Food Controller did not amount to a sale for the purpose of Section 2(h) of the U. P. Sales Tax Act. At the instance of the Commissioner of Sales Tax, the Additional Judge (Revisions) has referred the following questions:-

- (1) Whether the sales made to the Regional Food Controller under the U. P. Procurement (Levy) Order, 1959, are sales within the meaning of "Sales" under Section 2(h) of the U. P. Sales Tax Act?
- (2) Whether in the circumstances of the case the assessee is liable to pay sales tax on the sales made to the Regional Food Controller under the provisions of the U. P. Wheat Procurement (Levy) Order, 1959?"

The case came on for hearing before a Division Bench, which because of the importance of the questions raised, referred the case to a larger Bench. The case has now been laid before us.

2. To appreciate the controversy embodied in the questions referred, it is necessary to examine the U. P. Wheat Procurement (Levy) Order, 1959. The "Levy Order", as I shall describe it, was made in exercise of the powers conferred by Section 3 (2) of the Essential Commodities Act, 1955. It recites its purpose as the maintenance of supplies of wheat and the securing of its equitable distribution and availability at fair prices. Clause 3 of the Levy Order provides:-

"3. Levy on wheat procured or in stock:

(1) Every licensed dealer shall sell to the State Government at the controlled prices

(a) Fifty (50%) per cent of wheat held in stock by him at the commencement of this order:  
and

(b) Fifty (50%) per cent of wheat procured or purchased by him every, day beginning with the date of commencement of this order and until such time as the State Government otherwise directs.

(2) The wheat required to be sold to the State Government under sub-clause (1) shall be delivered by the licensed dealer to the Controller or to such other person as may be authorized by the Controller to take delivery on his behalf,"

Clause 4 confers the power of entry, search and seizure on enforcement officers with a view to securing compliance with the Levy Order.

3. The essential question before us is whether when a licensed dealer supplies wheat to the State Government pursuant to CL 3 of the Levy order he has effected a sale as defined under Section 2(h) of the U. P. Sales Tax Act and is liable to sales tax under that Act.

4. The contention of the Assessee is that the supplies made by it are not under any contract of sale between it and the State Government but wholly because of the compulsion imposed on it by Clause 3 of the Levy Order, and therefore, there is no sale and consequently no liability to Sales Tax. The Commissioner urges that the supplies effected under the Levy Order, must be considered as made pursuant to an agreement between the assessee and the State Government and the provisions of Clause 3 of the Levy order do not wholly exclude such agreement. Learned counsel for the parties have sought to support their submissions on the basis of some recent Supreme Court decisions, each party contending that what has been said there supports him. Before anything, therefore, it is appropriate that I refer to those decisions.

5. The first case is *New India Sugar Mills v. Commissioner of Sales Tax Bihar*<sup>1</sup>, The Assessee there owned a factory in Bihar and in compliance with directions issued by the Controller under the Sugar and Sugar Products Control Order, 1946 dispatched sugar to the agents of the State of Madras. In assessment proceedings under the Bihar Sales Tax Act, 1947 the assessee contended that the supplies made by it could not be described as sales because there was no contract of sale. The facts disclose that the Govt. of different States intimated their requirements of sugar to the Sugar Controller of India from time to time. After considering those requisitions and having regard to the statements of stock received from various sugar Factories, the Sugar Controller made allotments. An allotment order was sent by him to the factory owner directing him to supply sugar to the State Government in accordance with dispatch instructions to be conveyed by the latter. The State Government was notified of the allotment and upon dispatch instructions communicated by it to the factory the sugar was dispatched by the factory. It was admitted that those facts represented the course of dealing between the assessee and the State of Madras. The

Supreme Court held, by majority (Kapur and Shah, JJ.), that the transactions of dispatches of sugar by the

1AIR 1963 SC 1207

assessee pursuant to the directions of the Controlled were not the result of any contract of sale. Reference was made to *State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.*<sup>2</sup>, where while examining the validity of statutes of provincial legislatures imposing sales tax on the value of goods used in the execution of building contracts, the Supreme Court observed that the expression 'Sale of goods' in Entry 48 of List II of the Seventh Schedule of the Government of India Act, 1935 was a nomen juris and must be considered in the identical sense in which it had been understood in the Indian Sale of Goods Act, and the Provincial Legislatures had no power to tax a transaction which was not a sale of goods as understood in that Act. Now Section 4 of the Indian Sale of Goods Act, which defines the contract of sale' and 'sale' has been borrowed almost verbatim from Section 1 of the English Sale of Goods Act, and the Court therefore, adverted to what is said in Benjamin on Sale Eighth Edn:-

"To constitute a valid sale there must be a concurrence of the following elements, namely

(1) parties competent to contract;

(2) mutual assent;

(3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and

(4) a price in money paid or promised." It was pointed out that the second ingredient, namely mutual assent, was wanting in the course of dealing between the assessee, the New India Sugar Mills Ltd., and the State. There was no offer by the State Government to purchase sugar and no acceptance of any offer by the manufacturer. The manufacturer was left with no volition under the Control order, and it was obliged to carry out the order of the Controller to supply the sugar on pain of punishment for breach of the order. Hidayatullah, J. found himself unable to agree. He pointed out that consent under the law of contract need not be express but could be implied, that a sale could also take place by operation of law rather than by mutual agreement, express or implied, and that in the case before the Court when the State Government after receiving the allotment order sent instructions to dispatch the sugar and the factory dispatched it a contract emerged and consent had to be implied on both sides though not expressed antecedently to the allotment. He observed that although there was compulsion both in selling and buying, a compelled sale was nevertheless a sale, and it could not be said that there was no sale because the freedom to offer and accept was wanting.

6. The next case is *Indian Steel and Wire Products Ltd. v. State of Madras*<sup>3</sup>, The assessee was assessed to sales tax under the Madras General Sales Tax Act, 1939 on the turnover of steel products supplied by it in pursuance of the orders of the Controller under the Iron and Steel (Control of Production and Distribution) Order, 1941 issued under the Defense of India Act, 1939. Relying principally on M/s. New India Sugar Mills, AIR 1963 Supreme Court 1207

(Supra) the assessee contended that as it was the controller who determined the persons to whom the goods were to be supplied, the price at which they were to be supplied, the manner in which they were to be transported, and the mode in which the

21959 SCR 379

3 AIR 1968 SC 478

payment of the price was to be made, there was nothing left for the parties to determine by agreement, and therefore, the transactions could not be considered as sales. The Supreme Court did not accept the contention, observing that while the Controller fixed the base price of the steel products and determined the buyers the parties were free to decide the remaining terms of the contract by consent. It was open to the assessee to agree with its customers as to the dates on which the goods were to be supplied. All orders booked were subject to the assessee's terms of business in force at the time, and it was also open to the assessee to fix the time and mode of payment of the price of the goods supplied. Accordingly, it could not be said, observed the Court, that the transactions were completely regulated and controlled by the controller leaving no room for mutual assent.

7. The third case is *Andhra Sugar Ltd. v. State of Andhra Pradesh*<sup>4</sup>, Under Section 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 the State Government was authorized to levy a tax on the purchase of cane by a factory. It was contended that Section 21 was ultra vires because it proceeded beyond the scope of Entry 54 of List II of the Seventh Schedule of the Constitution which treated with "taxes on the sale or purchase of goods .....". The submission was that as the factory was compulsorily bound to purchase the cane offered by a cane grower the "purchase" was not under any agreement for the purchase of the cane and, therefore, on a parity with the reasoning employed in *Gannon Dunkerley and Co. (Mad.) Ltd.*, 1959 SCR 379 (supra) the legislative power to tax was exceeded. The contention was not accepted by the Supreme Court. Bachawat, J., speaking for the Court, referred to the related provisions of the Indian Sale of Goods Act and the Indian Contract Act and analysing the position under the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act and the Rules framed under it; he observed:-

"..... The cane grower in the factory zone is free to make or not to make an offer of sale of cane to the occupier of the factory. But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in Section 14 of the Indian Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in Section 15 of the Act. In spite of the compulsion, the agreement is neither void nor voidable. In the eye of law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provisions of law. The agreements are enforceable by law and are contracts of sale of sugarcane as defined in Section 4 of the Indian Sale of Goods Act. The purchases of

sugarcane under the agreement can be taxed by the State Legislature under Entry 54, List II."

It was emphasised that even though there was no freedom of bargaining between the parties the contract was still a contract of sale. The Court rejected the submission that the decision in *New India Sugar Mills Ltd.*, AIR 1963 Supreme Court 1207 (Supra) should be regarded as an authority for the proposition that there can be no contract of

<sup>4</sup> AIR 1968 SC 599

sale under the compulsion of a statute. It was a matter, it said, which turned upon the facts of each case and the terms of the particular statute regulating the dealings between the parties.

8. I may also refer to the recent decision of the Supreme Court in *State of Rajasthan v. Karam Chand Thapar and Bros Ltd<sup>5</sup>*, 'The Court held that there was an agreement of sale between the parties and although the price chargeable for the goods was fixed under the Colliery Control Order, the effect of the Control Order was only to superimpose upon the agreement between the parties the rate fixed under the order. It was a case where the contract was merely modified by statutory provisions.

9. The U. P. Wheat Procurement (Levy) Order, 1959 has been made, as its preamble states, for maintaining the supplies of wheat and for securing its equitable distribution and availability at fair prices. It is a measure designed in the interest of social security and public welfare. It requires a licensed dealer to sell a specified percentage of the wheat with him to the State Government. The Levy order necessarily contemplates a transaction of sale by the dealer to the State Government. It is significant that it speaks of a 'licensed dealer. A 'Licensed dealer' is defined by Clause 2(d) as 'a person holding a valid license' under the U. P. Food grains Dealers' Licensing Order, 1959, The Licensing order, which has also been made under Section 3(2) of the Essential Commodities Act, 1955 and with the same objective as the Levy Order, prohibits a person from carrying on business as a food gains dealer without a license issued under that Order. It is an Order which deals only with persons who carry on the business of selling food grains. Therefore, a licensed dealer, required by the levy Order, to sell wheat to the State Government is a person whose business it is to sell wheat, and the levy order contemplates that in the course of, and as part of his business activity, he will sell wheat to the State Government. It is important to note that the Levy Order selects a licensed dealer, and no one else. If its purpose was the compulsory acquisition of wheat it could have, consistent with its object, cast the net wider and enclosed within it all persons, whether dealers or not, who had wheat in stock or procured or purchased it. But it confines itself to a licensed dealer. It selects a person whose business it is to sell. That I think clearly indicates that what is intended by the Levy Order is a sale transaction. Now, it is true that the Levy Order does not expressly mention that a contract of sale will be entered into between the licensed dealer and the State Government, as was the case in *Andhra Sugar Mills Ltd.*, AIR 1968 Supreme Court 599 (Supra). But here by necessary implication a contract of sale is contemplated. How else can "a licensed dealer sell?"

10. Analyzing in Clause 3 of the Levy order it is clear that a licensed dealer is obliged to sell to the State Government fifty per cent of the wheat held in stock by him at the commencement of the order, and thereafter fifty per cent of the wheat daily procured or purchased by him beginning with the date of commencement of the order until such time as the State Government otherwise directs. The price at which the wheat is sold is the maximum price fixed in the Wheat (Uttar Pradesh) Price Control Order, 1959 as notified by the Government of India. Delivery of the wheat has to be given by the dealer to the Regional Food Controller or a person authorized by him in that behalf. The dealer has no option but to sell the specified percentage of wheat to the

<sup>9</sup>Civil Appeal No. 1364 of 1966, D/d. 27-8-1968

State Government. The State Government has also no option but to purchase fifty per cent of the wheat held in stock by the dealer at the commencement of the Levy Order. As regards the wheat procured or purchased daily by the dealer thereafter, it is open to the State Government to say that from any particular date it will not purchase any or all of the specified percentage of wheat.' Therefore, as regards that wheat the Levy Order leaves it open to one of the parties, namely the State Government, to decide when it will stop purchasing wheat from the dealer. That in substance is Clause 3 of the Levy Order and it embodies the total sum of obligations imposed on the dealer and the State Government. All other details of the transaction are left open to negotiation. It leaves it open to the parties to negotiate in respect of the time and mode of payment of the price, the time and the mode of delivery of wheat and other conditions of the contract.

11. Before anything further, it is necessary to be clear about one thing. And that is that the obligations imposed by Clause 3 of the Levy order are imposed by legislation. The Levy Order is a piece of legislation made in the exercise of legislative power delegated by Section 3(2) of the Essential Commodities Act, 1965. It is a legislative measure made by the State Government, as a delegate exercising legislative power conferred upon it by Parliamentary Statute. Moreover, if the dealer is exposed to penalty for breach of the Levy Order, that is by virtue of Section 7 of the Essential Commodities Act, which makes a breach of the order punishable. Therefore, whatever compulsive or coercive force is used to bring about a transaction under Clause 3 of the Levy Order, it must be traced to legislation. It cannot be attributed to the State Government as a party to the transaction. This, then is clear. There is nothing in the Levy Order which can be accused of vitiating the free consent of the parties, as defined under Section 14 of the Indian Contract Act, when entering into the contract of sale. It was a similar test which the Supreme Court applied in *Andhra Sugar Mills Ltd.*, AIR 1968 Supreme Court 599 (Supra).

12. So, we have here in the Levy order a law which imposes restrictions on the freedom to contract. But as was observed by the Supreme Court in *Indian Steel and Wire Products Ltd.*, AIR 1968 Supreme Court 478 (supra):

"It would be incorrect to contend that because law imposes some restrictions on freedom

to contract, there is no contract at all."

The freedom of contract is not, materially impaired merely because the legislation requires a dealer to enter into a contract of sale with another. A sale under the compulsion of a statute is still a sale. It is not unknown that legislation itself should supply some of the terms of a contract. Instances are not uncommon where the legislature has intervened to modify the customary terms of a contract or to inject new elements into it. So long as the essential contractual base is not impaired no serious violence is done to the freedom of contract. Modern jurists conceive of the law as a powerful instrument of social engineering. They point out that in a social order where the doctrine of laissez-faire has yielded place to the concept of a welfare society, the movement appears to proceed once again from contract of status. The development is normal and inevitable when the absolutism of individual rights has begun to give way to the play of wider social interests. Indeed, it is too late in the day to permit the values of a rapidly withering philosophy to influence and contain the growth of socially progressive forces. So long as these considerations can operate within the basic and primary fundamentals of the law, so long as they reflect progressive social trends consistent with the principles expressed in the Constitution, the approach which the Courts must adopt today when considering them becomes increasingly clear. A too rigid approach, valid when the values of a different social order dominated society, can result in stultifying the aspirations and objectives expressed in the Constitution, which carefully balances individual right against the social good.

13. Both in *Indian Steel and Wire Products Ltd.*, AIR 1968 Supreme Court 478 (Supra) and *Andhra Sugar Mills Ltd.*, AIR 1968 Supreme Court 599 (Supra) the Supreme Court has referred with approval to what Cheshire and Fifoot 6th Edn. P. 23 have said in their 'Law of Contract'

"As the nineteenth Century waned it became ever clearer that private enterprise predicted some degree of economic equality if it was to operate without injustice. The very freedom to contract with its corollary the freedom to compete, was merging into the freedom to combine; and in the last resort competition and combination were incompatible. Individualism was yielding to monopoly, where strange things might well be done in the name of liberty. The twentieth century has seen its progressive erosion on the one hand by opposed theory and on the other by conflicting practice. The background of the law social, political and economic, has changed. Laissez-faire as an ideal has been supplanted by 'social security;' and social security suggests status rather than contract....."

The Supreme Court has repeatedly stressed that in the changing social pattern of today, the area within which a prospective buyer and an intending seller can bargain has been greatly reduced, and in *Indian Steel and Wire Products Ltd.*, AIR 1968 Supreme Court 478 (supra) that consequence was considered inevitable because:

"under the existing economic compulsions all essential goods being in short supply in a

welfare State like ours, social control on many of our economic activities is inevitable. That does not mean that there is no freedom to contract. The concept of freedom of contract has under gone a great deal of change even in those countries where it was considered as one of the basic economic requirements of a democratic life. Full freedom to contract was never there at any time. Law invariably imposed some restrictions on freedom to contract. But due to change in political outlook and as a result of economic compulsions, the freedom to contract is now being confined gradually to narrower and narrower limits."

14. This Court in *Dharam Das Vasan Mal v. Sales Tax Officer, Banda*<sup>10</sup>. considered the closely analogous provisions of the U. P. Rice Procurement (Levy) Order 1958 and held that the transactions effected there were sales taxable under the U. P. Sales Tax Act. That is a conclusion with which, upon the considerations set out above, I respectfully agree.

<sup>10</sup>1961 All LJ 528

15. I may refer, en passant, to *M/s. Cement Ltd. v. State of Orissa*<sup>11</sup>, and *S. K. Roy v. Additional Member, Board of Revenue, West Bengal*<sup>12</sup>, In neither of those cases do the considerations which have prevailed with me appear to have been placed before the learned Judges who decided those cases and held that the transactions there were not sales.

16. In my judgment the sales made to the Regional Food Controller under the U. P. Wheat Procurement (Levy) Order, 1959 must be held to be sales as contemplated by the Indian Sale of Goods Act, and therefore, sales within the meaning of Section 2(h) of the U. P. Sales Tax Act. That being so the assessee is liable to pay sales tax on such sales.

17. In the result I answer the questions referred in the affirmative.

18. The Commissioner of Sales Tax is entitled to his costs which I assess at Rs. 200/-. Counsels' fee is also assessed in the same figure.

**R. L. Gulati, J.**

19. I agree.

**M. H. Beg, J.**

20. The question to be answered and the relevant facts and provisions of law which gave rise to them are fully set out by my learned brother R. S. Pathak, J. I need not, therefore, repeat them. I will only indicate briefly my reasons for respectfully concurring with my learned brother. The answer to the first question seems to me to provide the answer to the second question automatically.

21. It is apparent that only a "Sale", as it is known to law, and no other kind of transaction can be taxed under the provisions of the U. P. Sales Tax Act. The view taken by the Supreme Court in AIR 1958 Supreme Court 560 was that the word "sale", as used in Entry No. 48 of Schedule VII of List 2 of Government of India Act of 1935 as well as in Entry No. 54 of Schedule VII of List 2 of the Constitution, has the same meaning as the term "Sale" has in the Sale of Goods Act of 1930, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement". On this ground, a building contract, the terms of which were found to be "one, entire, and indivisible," was held to be outside the purview of "sale" of goods as a Nomen Juris.

22. In AIR 1963 Supreme Court 1207, the Supreme Court said that the ratio decidendi of G. Dunkerley and Co.'s case, 1959 SCR 379 : AIR 1958 Supreme Court 560 (supra) must govern its decision here also (see p. 1212). The majority view of their Lordships of the Supreme Court in this case was that the transactions before the court, in which sugar was supplied by a sugar factory in compliance with orders of the Government, passed under the Sugar and Sugar Products Control Order, 1946, did not

<sup>11</sup>(1961) 12 STC 205 (Ori)

<sup>12</sup> AIR 1967 Cal 338

amount to sales. The basis of this view was that supplies made in this case in obedience to orders given excluded the process of offer and acceptance as a result of any negotiations so that free consent, which was held to provide the essence of a contract to sell, was absent.

23. The trend of subsequent decisions of the Supreme Court is to uphold the character of transactions as sales notwithstanding the existence of an element of compulsion resulting from control orders which circumscribe the area of choice within which sales can take place. In AIR 1968 Supreme Court 478 sales regulated by a war time legislative measure. The Iron and Steel (Control of Production and Distribution), Order, 1941 came up for consideration. It was held that they were sales notwithstanding that the sales in question could only take place at prices fixed by a

Controller and "in accordance with the conditions contained or incorporated in general or special order of the Controller." The ground for a unanimous decision of five of their Lordships of the Supreme Court was that the test of "sale" laid down in G. Dunkerley and Co.'s case, 1959 SCR 379 : AIR 1958 Supreme Court 560 (supra) was satisfied. It was pointed out that this test was satisfied if there was a concurrence of the following elements viz., (1) parties competent to contract, (2) mutual assent, (3) a thing the absolute or general property in which is transferred from the seller to the buyer, and (4) a price in money paid or promised." The earlier decision in New India Sugar Mills case, AIR 1963 Supreme Court 1207 (supra) was distinguished on facts as "no room for mutual assent" was left in transactions under consideration in the earlier case.

24. In AIR 1968 Supreme Court 599 at p. 606 their Lordships of the Supreme Court ruled that the majority view in New India Sugar Mills case, AIR 1963 Supreme Court 1207 (supra) must be confined to the facts of that particular case. In other words, the ratio decidendi of the earlier case

could not be correctly deduced from the case without reference to the context and the subject-matter to which the accepted definition of sale had been applied. It appears to me that their Lordships adopted a well-recognized method of extracting the ratio decidendi of a case, indicated in Salmond's Jurisprudence (See: 12th edition, p. 29) and applied it to distinguish the New India Sugar Mills case, AIR 1963 Supreme Court 1207 (supra) from the cases before them both in Indian Steel and Wire Products case, AIR 1968 Supreme Court 478 (supra) and in the Andhra Sugar Ltd.'s case, AIR 1968 Supreme Court 599 (supra).

25. In Andhra Sugar Ltd.'s case, AIR 1968 Supreme Court 599 (supra) their Lordships of the Supreme Court pointed out that, although, the consequence of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act of 1961 and the rules framed there under was to compel factories to enter into contracts of purchase of cane offered to them by cane growers on prescribed terms and conditions, yet, the nature of the transactions between the cane growers and the sugar factories did not lose the essential ingredients of "sale" inasmuch as there was offer and acceptance, the passing of consideration between the parties concerned, and an absence of any of the features which invalidate a contract,

26. If there had been a conflict between the ratio decidendi of the earlier three-Judge decision of the Supreme Court by a majority of one and the later Supreme Court decisions given by five of their Lordships unanimously in each case, we would have been bound to follow only the later decisions. But, as the Supreme Court has itself held in both the later cases that there was a distinction between the ratio decidendi of these cases and that of the earlier case, the question before us resolves itself into determining whether, the ratio decidendi of the earlier case New India Sugar Mills Case, AIR 1963 Supreme Court 1207 or that of either of the two later cases governs the case before us.

27. This brings me to the facts of the case before us. Here, no particular sale is shown to have taken place as a result of any specific direction or order of the Government to make a supply. There is however, Clause 3 of the U. P. Wheat Procurement (Levy) Order, 1959, which the assessee had to comply with in carrying on his business. This clause has already been reproduced in the judgment of my learned brother R. S. Pathak, J. The obvious result of the provision was that a licensed dealer was obliged to offer the quantities of wheat indicated in the order to the State Government which was impliedly bound to purchase it under the terms of this order at the controlled prices. The control order only restricts the field of choice of parties and the price at which an offer could be made by either side. Nevertheless, the process of offer and acceptance and payment of price, presumably fixed at a fair rate, was retained. The essential ingredients of "sale", as indicated above, are not destroyed. The form of the transactions before us is that of sales and not of a compulsory acquisition of goods to be supplied.

28. It appears to me to be necessary to distinguish between a restriction in the area of choice of parties and the transaction itself in order to determine the true character of the transaction. '

Limitation of the field of choice is a necessary concomitant of a controlled or mixed economy which ours is. Absolute freedom of contract or unregulated operation of the laws of supply and demand, which an apotheosis of the laissez-faire doctrine demanded, led really to a shrinking of the area of freedom in the economic sphere, producing gross inequalities in bargaining powers and recurrent crises. Therefore, a regulated or a socialistic economy seeks to regulate the play of forces operating on the economic arena so that economic freedom of all concerned, including employers and employees, is preserved and so that the interests of consumers are also not sacrificed by any exploitation of conditions in which there is scarcity of goods. I think that the regulation or restriction of the area of choice cannot be held to take away the legal character of the transactions which take place within the legally restricted field. It is too late in the day, when so much of the nation's social and economic activities are guided and governed by control orders, allotment orders, and statutory contracts, to contend that mere State regulation of the economic sphere of life results in the destruction of the nature of the transactions which take place within that sphere.

29. It is true that the contract of sale is as we know from the analysis of its ingredients in Roman Law, a consensual contract. The basis of a consensual contract is a "consensus ad idem" or an agreement upon the same thing in the same sense. Can we say that when a licensed dealer is compelled under the provisions of law to make an offer of wheat to the Government at a controlled price this basis is destroyed? I think not, Again, can we say that the contract is not one as a result of which property passes for payment of "price" in money? The answer is clearly in the negative. Therefore, the definition of sale given by our Sale of Goods Act is satisfied.

30. The New India Sugar Mills case, AIR 1963 Supreme Court 1207 (Supra) could apply only where the transactions before the Court are not sales in the eye of law. The binding character, or the legal obligation in such transactions is created by an order of the Government and payment of price is only an incidental product of the obligation. The legal duty to supply arises from the order. On the other hand, in the type of transactions before the Supreme Court in Indian Steel Wire Products case, AIR 1968 Supreme Court 478 (Supra) and Andhra Sugar Ltd.'s case, AIR 1968 Supreme Court 599 (Supra) and Civil Appeal No. 1364 of 1966, D/-27-8-1968 the legal tie (veniculum juris) which bound the parties to perform their obligations was contractual. A regulatory law merely adds the obligation to enter into such a tie between the parties indicated there. It may even specify the terms, such as price, on which the agreement will take place. Regulation is still found to be subsidiary in such cases when the character of the transactions is examined. The transactions may take place within the limits set by or even as a consequence of a regulatory order. They are, however, sales in ultimate analysis. The case before us is governed by the ratio decidendi of the later type of cases. The dividing line between the two types of cases may appear to be very thin sometimes, but it is there,

31. I, therefore, answer the questions before us in the affirmative,

32. BY THE COURT :- Upon the reasons contained in our respective judgments we answer the questions referred in the affirmative.

33. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 200/-. Counsel's fee is also assessed in the same, figure.  
Reference answered in affirmative.