

KISHOREBHAI KHAMANCHAND GOYAL

A

v.

STATE OF GUJARAT AND ANR.

OCTOBER 30, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Bombay Shops and Establishments Act, 1948—Applicability of on coming into force of Motor Transport Workers Act, 1961—Motor Transport Operator—Found guilty of violations of provisions of State Act—Contending that on coming into force of the Central Act, the State Act stood repealed by necessary implication—Held, High Court rightly opined that notwithstanding enactment of the Central Act, obligation to comply with the requirement of the State Act did not get wiped out.

C

Interpretation of Statutes :

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Implied repeal—Inference—Held, there is presumption against repeal by implication—Presumption when stands rebutted and repeal inferred by necessary implication—Discussed.

Legal Maxim—expressio unius (persone vel nei) est exclusio alterius—Applicability of.

E

The appellant, a motor transport operator, was found guilty of violation of Bombay Shops and Establishments Act, 1948 (State Act). The fine imposed on him was upheld by the High Court, which held that notwithstanding the enactment of the Motor Transport Workers Act, 1961 (Central Act) the obligation to comply with the requirement of the State Act did not get wiped out.

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The transporter filed the present appeal contending that in view of s.37 of the Central Act, by necessary implication there was repeal of the State Act.

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Dismissing the appeal, the Court

HELD : 1.1. There is presumption against repeal by implication.

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- A** When a new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle *expressio unius (persone vel rei) est exclusio alterius*, i.e., the express intention of one person or thing is the exclusion of another. The presumption is however rebutted and a repeal is inferred by necessary implication when the provisions of the later Act
- B** are so inconsistent with or repugnant to the provisions of the earlier Act and that the two cannot stand together. The necessary considerations in this regard are: (1) whether there is direct conflict between the two provisions; (2) whether the legislature intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law; and (3)
- C** whether the two laws occupy the same field. [4-D-G; 5-A-B]

Municipal Council, Palai through the Commissioner of Municipal Council, Palai v. I.J. Joseph, AIR (1963) SC 1561; *Northern India Caterers (Private) Ltd. and Anr. v. State of Punjab and Anr.*, AIR (1967) SC 1581; *Municipal Corporation of Delhi v. Shiv Shanker*, [1971] 1 SCC 442; *Ratan Lal Adukia and Anr. v. Union of India*, AIR (1990) SC 104; *R.S. Raghunath v. State of Karnataka and Anr.*, AIR (1992) SC 81; *Pt. Rishikesh and Anr. v. Salma Begum, (Smt.)* [1995] 4 SCC 718 and *Shri A.B. Krishna and Ors. v. The State of Karnataka and Anr.*, JT (1998) 1 SC 613, relied on.

- E** *Garnett v. Bradley*, (1878) 3 AC 944 (HL) and *A.G. v. Moore*, (1878) 3 Ex.D 276, referred to.

- F** 1.2. The areas of operation of the Motor Transport Workers Act, 1961 and the Bombay Shops and Establishments Act, 1948 are different with wholly different aims and objects. They operate in their respective fields and there is no impediment for their existence side by side. There is no direct conflict between any of the provisions of the two statutes. The operation of the Central Act is not restricted in its area of operation by what is provided in the State Act and vice versa. The responsibilities and obligations of the management under both the Acts cannot be avoided altogether and it is only where on any particular aspect or stipulation, the
- G** prescription is found to overlap - to that extent and in respect of any such matter alone the Central Act will apply to the exclusion of a contra stipulation in the State Act and consequently, the State Act as a whole cannot be held to have been abrogated by the Central Act. [5-H; 6-D-E]

- H** *Bihar State Road Transport Corporation v. Orang Bahadur*, AIR (1968)

Pat. 200; Amamatsingh v. Presiding Officer, Industrial Tribunal, Bihar, AIR (1970) Pat. 269 and Corporation of the City of Nagpur through Shop Inspector v. M/s Inland Carriers, Nagpur and Anr., (1987) LLJ 270, approved. A

Re: Berry (1936) Ch. 274, referred to.

"Craies on Statute Law" Seventh Edition, 366, referred to. B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 642 of 1996.

From the Judgment and Order dated 1.3.95 of the Gujarat High Court in Crl. No. 338 of 1994. C

Rajesh Mahale for the Appellant.

Moullick Nanavati, Ms. Sadhna Sandhu and Ms. Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by D

ARIJIT PASAYAT, J. By the impugned judgment, the Gujarat High Court held that notwithstanding enactment of the Motor Transport Workers Act, 1961 (for short 'the Act') the obligation to comply with the requirement of the Bombay shops and Establishments Act, 1948 (for short 'the Establishments Act') did not get wiped out. E

Though the fine that was imposed on the appellant is not very much in terms of money, the appellant contended that the problem is of recurring nature, therefore, the issues should be settled. It was contended that there was divergence in views of several High Courts. The Patna High Court in *Bihar State Road Transport Corporation v. Orang Bahadur*, AIR (1968) Patna page 200 and *Amamathsingh v. Presiding Officer, Industrial Tribunal Bihar*, AIR (1970) Patna page 269 (Full Bench) held that the enactment of Act did away with the requirement to comply with requirements of Establishment Act by applying logic of implied repeal. The Bombay High Court also held likewise in the *Corporation of the City of Nagpur through Shop Inspector v. M/s Inland Carriers, Nagpur and Anr.*, (1987) LLJ 270. But a different view was adopted by the Gujarat High Court in the impugned judgment which different from the view of Patna High Court and Bombay High Court. F G

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A In support of the appeal, learned counsel for the appellant submitted that there must be a definite legislative intent that two statute should operate in respect of identical issues. The Establishments Act has been rendered repugnant by enactment of the Act. Reference is made to Section 37 of the Act to submit that by necessary implication there was repeal of the Establishments Act. Both these statutes fall under Entry 24 of List III (the
 B Concurrent List) of VII Schedule to the Constitution of India, 1950 (in short the 'Constitution') and, therefore, it is but natural to presume that there was a repeal by implication.

C Per contra, learned counsel for the State, submitted that the two statutes in question operate in different fields and there is no question of any repugnancy as was rightly held by the High Court.

The submission require careful consideration.

D There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation. (See: *Municipal Council, Palai through the Commissioner of Municipal Council, Palai v. T.J. Joseph*, AIR (1963) SC 1561, *Northern India Caterers (Private) Ltd. and Anr. v. State of Punjab and Anr.*, AIR (1967) SC 1581, *Municipal Corporation of Delhi v. Shiv Shanker*, [1971] 1 SCC 442 and *Ratan Lal Adukia and Anr. v. Union of India*, AIR (1990) SC 104. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle *expressio unius*
 E *(persone vel rei) est exclusio alterius*. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in *Garnett v. Bradley*, (1878) 3 Ac 944 (HL). The continuance of existing legislation, in the absence of an express provision of repeal being presumed the garden to show that there has been repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by
 F necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act and that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. (See: *A.G. v. Moore*, (1878) 3 Ex. D 276, *Ratanlal's case* (supra) and *R.S. Raghunath v. State of Karnataka and Anr.*, AIR (1992) SC 81.
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The necessary questions to be asked are :

(1) Whether there is direct conflict between the two provisions.

(2) Whether the Legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law;

(3) Whether the two laws occupy the same field.

(See: *Pt. Rishikesh and Anr. v. Salma Begum (Smt.)*, [1995] 4 SCC 718, and *Shri A.B. Krishna and Ors. v. The State of Karnataka and Ors.*, JT (1998) 1 SC 613.

The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The Court leans against implying a repeal, "unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together." (See *Craies on Statute Law*, Seventh Edition, page 366, with reference to *Re: Berrey* (1936) Ch. 274). To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The areas of operation of the Act and the Establishments Act in question are different with wholly different aims and objects. They operate in their respective fields and there is no impediment for their existence side by side. (See *State of M.P. v. Kedia Leather and Liquor Ltd. and Ors.*, (2003) 6 Supreme 213).

It is to be noted that there is no direct conflict between any of the provisions of the two statutes. The determinative test as noted above is whether the enactments are sharply conflicting or are inconsistent and/or repugnant. In the instance case it is not so. The operation of the Act is not restricted in its area of operation by what is provided in the Establishments Act and vice versa. Absence of some provisions in another Act does not amount to conflicting provision or inconsistent provision amounting to repugnancy of

A such provision.

If both Acts are made applicable it will serve workmen the best as the benefits which are not made available to them in the Central Act i.e. the Act are made available to them in the State Act i.e. the Establishments Act and the benefits which are not made available to them in the State Act are made available in the Central Act. By repeal of one, the benefits under the repealed Act stand withdrawn and such benefits are not provided in the existing Act. The workmen by applying logic of implied repeal will be deprived of such benefits. Both the Acts are enacted for the benefits and well being of workmen, and it would be appalling to comprehend a situation that withdrawal of benefit by enacting a statute was contemplated.

On a careful scrutiny of the provisions contained in both the above Acts, we find that the Act makes some specific provisions on certain aspects and areas of relationship between worker and management. It is not only silent but also does not advert to or deal with several other vital and crucial aspects of such relationship as are dealt with by the Establishments Act. The responsibilities and obligations of the management under both Acts cannot be avoided altogether and it is only where on any particular aspect or stipulation, the prescription is found to overlap - to that extent and in respect of any such matter alone the Act, pertaining to motor transport workers will apply to the exclusion of a contra stipulation in the Establishments Act and consequently, the Establishments Act as a whole cannot be held to have been abrogated by the Act. In substance, if at all, it can only at best be claimed that the operation of the law as contained in the Establishments Act would stand curtailed, if on any particular aspect there is a contra stipulation or provision in the Act in respect of a Motor Transport worker, and not otherwise.

This would be the proper, reasonable and inevitable consequence of a harmonious construction of the provisions of the two welfare legislations, so that the best of the both would be available to the worker concerned. The view taken by the Patna High Court and the Bombay High Court in the decisions noted supra, does not lay down the correct position of law while the one taken by the Gujarat High Court in the impugned judgment, merits approval in our hands.

Above being the position, the judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal fails and is dismissed.

H R.P.

Appeal dismissed.