ENGINEERING KAMGAR UNION

v.

M/S. ELECTRO STEELS CASTINGS LTD. AND ANR.

APRIL 16, 2004

[Y.K. SABHARWAL AND S.B. SINHA, JJ.]

Constitution of India, 1950—Article 254(2):

State Act and Central Act enacted in terms of List III—Inconsistency between laws made by both the enactments—Applicability of Article 254(2)—Held: Article 254(2) is attracted when there exists direct conflict between two enactments—Conflict is direct not only in case where provisions of one Act have to be disobeyed if provisions of the other is followed and also where both laws lead to different legal results—Furthermore, subsequent State legislation having received President's assent would prevail over the Parliamentary Act and in absence, the Parliament Act would prevail—On facts, State Act and Central Act covering same field relating to lay off, retrenchment and closure of undertaking and there exists a conflict between them, as such there is repugnancy—Hence, Article 254 (2) attracted—Section 6 V to 6X of State Act would prevail over Chapter VB of Central Act—Entry 22 List-III, Seventh Schedule—Industrial Disputes Act, 1947—Section 25K—25S, Chapter V-B—U.P. Industrial Disputes Act, 1947—Section 6V—6X.

Repugnancy—Determination of—With regard to the date of enactment of legislation or date of its coming into force—State Act received assent on 10.10.1983 whereas Central Act (46 of 1982) came into force with effect from 21.8.1984—Held: Article 254 does not contemplate coming into effect of a law having regard to the nature of the legislation as a conditional one—Conflict is with regard to the law already been made—State Act which received Presidential assent in conflict with earlier Central Act, hence State Act would prevail over the Central Act—Industrial Disputes Act, 1947—U.P. Industrial Disputes Act, 1947.

Presidential assent to State Law—Application of Article 254(2)—Held: To arrive at finding of fact that President was actually informed about the reason for grant of his assent—If the same is not fulfilled then such plea should be raised in Writ Petition or Special Leave Petition and not at the

stage of hearing for its first time as presumption exists with regard to the validity and legality of an official Act—Evidence Act, 1872—Section 114 (e) and (f).

Interpretation of Statutes—Non-obstante clause—Overriding effect—Discussed—Industrial Disputes Act, 1947—U.P. Industrial Disputes Act, 1947.

First respondent-industrial establishment employed more than 100 persons in its factory. It issued notice for closure of the factory and termination of services of 99 workmen. Appellant-registered trade union challenged the validity of the notice that as more than 300 workmen are employed in the factory, the Industrial Disputes Act, 1947-Central Act would be applicable. Thereafter, Assistant Labour Commissioner issued notice to the respondent for prosecution for contravention of section 25 of the Central Act. Respondent contended that as the number of employees in the undertaking being less than 300, no permission for closure of the undertaking was required in view of section 6-W read with section 6-V of the Uttar Pradesh Industrial Disputes Act, 1947-State Act. First respondent filed writ petitions challenging the notice and appellant filed writ petition challenging the closure notice. High Court held that the State Act would prevail over the Central Act having regard to Article 254(2) of the Constitution. It allowed the writ petitions filed by first respondent; however dismissed the petition filed by appellant. Hence the present appeal.

Appellant-trade union contended that the rights of both the employer and the workmen in relation to an industrial establishment having more than one hundred workmen in respect of layoff, retrenchment and closure would be governed by sections 25K, 25S, 25O along with 25J of Chapter V-B of the Central Act notwithstanding the State Act laying down provision to the contrary; that the provisions of Chapter V-B would be applicable to an industrial establishment employing more than one hundred workmen and the provisions of State Act would not apply to industrial establishment employing less than 300 workmen, but there does not exist any contradiction or repugnancy as it is possible to apply both the Central Act and the State Act by the employer upon following the procedure laid down under the Central Act; that sections 6V to 6W of the State Act received President's assent on 10.10.1983 and Central Act (46 of 1982) was brought into force with effect from 21.8.1984 as such when Presidential assent was obtained for the State Act in 1983, there was no repugnancy in fact but there existed merely a future possibility of repugnancy; that no records had been produced by the State showing that the President was actually

informed about the reason for grant of his assent; and that in relation to Chapter V-B and section 6R of the State Act there does not exist any such conflict as section 25J has become part of Chapter V-B by reason of section 25S of the Central Act, section 6R of the State Act remained unaltered and as such the non-obstante clause contained therein make the same prevail over the State Act. A B

Respondent-industrial establishments contended that the statutory schemes of Central Act and the State Act are distinct and produce two different legal results and must be held to be irreconcilable and repugnant to each other and as such Clause (2) of Article 254 would apply; that clause (2) of Article 254 refers to Central Act which had already been made, the application thereof at a later stage would be wholly immaterial and irrelevant; that as the appellant did not raise the plea that the President's assent was obtained without informing him the purpose for which it was sought either in the writ petition or Special Leave Petition he should not be permitted raise the same at this stage; and that as regard applicability of the non-obstante clause contained in section 25S vis-a-vis section 25J of the Central Act, the former introduced a non-obstante clause as regard Chapter V-A and, thus, section 25J cannot be held to have formed a part of Chapter V-B, in any event, even if section 25S vis-a-vis section 25J have an overriding effect, the constitutional provisions contained in Clause (2) of Article 254 would prevail thereover. C D E

Dismissing the appeals, the Court

HELD: 1. Article 254 of the Constitution of India, 1950 would be attracted only when both the Parliament and State Legislatures have legislative power to make laws with respect to any matter enumerated in the Concurrent List, they operate in the same field and there exists direct conflict between two provisions and not otherwise. Ordinarily both the laws would be allowed to have their play in their own respective fields. Once it is held that the law made by the Parliament, and the State Legislation occupy the same field and there exists direct conflict between two enactments, the subsequent legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act and in absence of presidential assent, the Parliamentary Act would prevail. [313-A-H; 314-A-C] F G

Deep Chand v. *State of Uttar Pradesh and Ors.*, AIR (1959) SC 648; *M. Karunanidhi* v. *Union of India and Anr.*, [1979] 3 SCC 431; *The State of* H

A *West Bengal* v. *Kesoram Industries Ltd. and Ors.*, (2004) 1 SCALE 425 and *M.P.A.T.T. Permit Owners Assn. and Anr.* v. *State of Madhya Pradesh* (2003) 10 SCALE 380, relied on.

Zaverbhai Amaidas v. *The State of Bombay* [1955] 1 SCR 799; *Ch. Tika Ramji and Ors etc.* v. *State of Uttar Pradesh and Ors.*, [1956] SCR 393 and B *ITC Ltd.* v. *Agricultural Produce Market Committee and Ors.*, [2002] 9 SCC 232, referred to.

2.1. The Industrial Disputes Act, 1947-Central Act and the U.P. Industrial Disputes Act, 1947-State Act have been enacted in terms of Entry 22 of List III of the Seventh Schedule of Constitution in 1947. C Chapter V-A of the Central Act relates to lay off and retrenchment which was inserted by Act No. 43 of 1953 and section 25J provides for effect of laws inconsistent with Chapter V-A of the Central Act. It had an overriding effect. The State Act was amended in the year 1957 providing for lay off, retrenchment and closure which was made applicable in D relation to an industrial establishment wherein not less than 300 workmen are employed. Section 6R of the State Act provides for effect of laws inconsistent with sections 6J to 6Q and in terms of sub-section (2) thereof, the provision of section 6R shall be deemed not to affect the provision of any other law for the time being in force. The Parliament introduced special provisions relating to layoff, retrenchment and closure by inserting E Chapter V-B in the Central Act containing section 25K to 25S in the year 1976. In terms of Section 25K, Chapter V-B was to apply in an establishment in which not less than 300 workmen are employed. Section 25S provides that certain provisions of Chapter V-A including Section 25J shall apply to an industrial establishment to which the provisions of F Chapter V-B apply. [311-H; 312-A-D]

2.2. By Act No. 46 of 1982 the Chapter V-B of the Central Act was amended *inter alia* to extend the beneficent provisions to workmen of small establishments by reducing the existing employment limit thence from 300 to 100. But the State Act was amended by Act No. 26 of 1983 after the G amendment of the Central Act. It is not in dispute that Section 25K and Section 25O of the Central Act are in *pari materia* with Sections 6Y and 6W of the State Act. If the procedures laid down in the Central Act are not applicable, a person need not comply the provisions therein keeping in view the fact that its industrial establishment is covered by the State H Act in terms whereof the applicability of the relevant provisions would

be attracted only when the establishment employs more than 300 persons. [312-D-G]

2.3. In the instant case, Central Act and State Act indisputably covers the same field. The jurisdiction of the State Legislature to enact a law by a parliamentary legislation is not impermissible. Subject to the provisions contained in Article 254 both will operate in their respective fields which is absolutely clear and unambiguous. With regard to the effect of one Act over the other in the event it is found that there exists a conflict, the conflict would be direct not only in a case wherein the provisions of one Act would have to be disobeyed if the provisions of the other is followed but also where both the laws lead to different legal results. The conflict between the Central Act and the State Act was apparent. [314-D-F, 318-D]

M. Karunanidhi v. *Union of India and Anr.*, [1979] 3 SCC 431, distinguished.

3. The Central Act received the President's Assent on 31.8.1982, the State Act received the President's Assent on 10.10.1983. The amending Act of 1982 was published in Gazette of India on 1.9.1982 and was given effect to from 21.8.1984 whereas the State Act was published in the U.P. Gazette on 12.10.1983 and was given effect to from 3.8.1983. The phraseology used in Article 254 of the Constitution is clear and unambiguous. It does not contemplate coming into effect of a law having regard to the nature of the legislation as a conditional one. It in no uncertain terms states that the conflict is required to be found out keeping in view a law which has already been made. The makers of the Constitution deliberately and consciously used past tense. It has, thus, to be given its ordinary meaning. Therefore, keeping in view the plain language used in Article 254(2), in the fact and circumstance of the case, the State Act in view of the Presidential Assent given thereto would prevail over the Central Act. [321-A-B]

Pt. Rishikesh and Anr. v. *Salma Begum* [1995] 4 SCC 718 and *M.P. Shikshak Congress and Ors.* v. *R.P.F. Commissioner, Jabalpur and Ors.*, [1999] 1 SCC 396, distinguished.

4. State of Uttar Pradesh inserted Section 6V by Act No. 26 of 1983 being conscious of the fact that an Act had been passed to the contrary by the Parliament in terms of Act No. 46 of 1982. So long Chapter V-B was applicable to an industrial establishment engaging 300 or more persons, the State did not insert any provision and allowed the Parliament

A to occupy the field relating to layoff, retrenchment and closure of industrial undertakings. Only when the number of workmen having regard to the legislative policy as would appear from the Statement of Objects and Reasons was brought down to 100 from 300 for the purpose of applicability of Chapter V-B of the Central Act, the amendment was brought in by the B State. The provisions contained in Section 6V by reason of the 1983 Amendment by the Legislature of the State of Uttar Pradesh must have been made consciously in relation whereto only the legislation was reserved for the Presidential Assent. The plea that the assent of the President was obtained without clearly informing him the purpose for which the same was sought for, it was necessary for them to raise such a plea in the writ C petition. Such plea had not been raised in the writ petition, Special Leave Petition and cannot be raised at this stage before this Court for the first time. Section 114 (e) of the Evidence Act raises a presumption that all official acts must have been performed regularly and Section 114(f) that the common course of business has been followed in particular cases. The D said presumptions would apply in this case also. Therefore, it is proceeded on the presumption that the State amended the Act having regard to the provisions of the Central Act and the Presidential Assent was sought for only on account thereof. [322-B-F]

Kaiser-I-Hind Pvt. Ltd. and Anr. v. *National Textile Corp. (Maharashtra* E *North) Ltd. and Ors.*, [2002] 8 SCC 182, referred to.

5. Section 25S does not introduce a non-obstante clause as regard Chapter V-A. Furthermore, Section 25J is not a part of Chapter V-B. By reason of Section 25S where the Parliament has deliberately used the words "so far as may be" which would indicate that provisions of Chapter F V-A were to apply also in relation to certain industrial establishment to which provisions of Chapter V-B apply. The non-obstante clause contained in Section 25J does not apply to the entire Chapter V-B. It is required to be kept confined to Chapter V-A. Applicability of Chapter V-A in relation to the industrial establishments covered by Chapter V-B in terms of G Section 25J *vis-a-vis* Section 25B is permissible but it cannot be said that Section 25O of the Central Act prevail over the State Act by taking recourse to the non-obstante clause. In that view of the matter Chapter V-B does not have an overriding effect over the State Act. Furthermore, even if Section 25S of the State Act is read to have an overriding effect, undoubtedly the provisions of the supreme lax shall prevail over a statute. H A non-obstante clause contained in a statute cannot override the provisions

of the Constitution. [323-A-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 86-89 of 2000.

From the Judgment and Order dated 14.10.99 of the Allahabad High Court in C.M.W.P. Nos. 38838, 33093/98, 4333 and 13086 of 1999. B

Gaurab Banerjee, Rajiv Mehta, Saurav Aggarwal and B. Aggarwal for the Appellants.

Jayant Bhushan, Ramesh Singh, Ms. Gauri Rasgotra and Sanjeev Kumar for the Respondents. C

The Judgment of the Court was delivered by

S.B. SINHA, J. The question of application of Clause (2) of Article 254 of the Constitution of India is involved in this appeal which arises out of the judgment and order dated 14.10.1999 passed by the High Court of Allahabad dismissing the writ petition filed by the appellants herein and D allowing the writ petitions filed by the respondent-company herein.

BACKGROUND FACTS:

The appellant herein is a Trade Union registered under the Indian Trade Unions Act, 1926. The first respondent herein is an industrial establishment E carrying on business in Engineering Industry. It admittedly employed more than 100 persons in its factory at Ghaziabad. A notice was issued by it on or about 21.9.1998 declaring its intention to close down the said factory at Ghaziabad with effect from 23.9.1998 as a result whereof it was notified that services of 99 workmen would be terminated. F

An industrial dispute was raised by the appellant herein on or about 23.9.1998 questioning the validity of the said notice raising a factual plea that more than 300 workmen are employed by the first respondent in its Ghaziabad establishment and, thus, the Industrial Disputes Act, 1947 (hereinafter referred to as "the Central Act") would be applicable. Pursuant G to or in furtherance of the purported complaint made by the appellant herein, a notice was served by the Assistant Labour Commissioner upon the first respondent herein directing it to show cause as to why it should not be prosecuted for contravention of the provisions contained in Section 25 of the Central Act. In its reply dated 3.10.1998, the first respondent raised a plea to the effect that as the number of employees in the said industrial undertaking H

A was less than 300, no permission for closure of the industrial undertaking was required in view of Section 6-W read with Section 6-V of Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as 'the State Act').

Two recovery certificates were issued against the first respondent towards the salary of the workmen under the State Act. Three writ petitions came to B be filed by the first respondent questioning the show-cause notice as also the recovery certificates aforementioned. The appellant herein also filed a writ petition questioning the closure notice issued by the first respondent. By reason of the impugned judgment, the writ petitions filed by the first respondent were allowed, whereas the writ petition filed by the appellant herein was C dismissed.

HIGH COURT JUDGMENT:

The High Court in its impugned judgment held that having regard to the fact that Chapter V-B of the Central Act was inserted on or about 21.8.1984, D the State Act having been enacted in the year 1983 whereby and whereunder Sections 6-V to 6-X were inserted, the latter shall, having regard to Article 254 (2) of the Constitution of India, prevail over the former. The High Court although took notice of the fact that the Chapter V-B of the Central Act came into force in the year 1984, it was held that in view of the phraseology used in Article 254 the repugnancy has to be tested in terms of the date of enactment E of the legislation in preference to the date of its coming into force. In support of its aforementioned conclusion, strong reliance was placed by the High Court on the decision of this Court in *Pt. Rishikesh and Anr.* v. *Salma Begum,* [1995] 4 SCC 718.

F **SUBMISSIONS:**

Mr. Gaurab Banerjee, learned senior counsel appearing on behalf of the appellant has raised a number of contentions in support of these appeals. At the outset the learned Counsel had taken us through the relevant provisions of the Central Act, State Act and submitted as under:

G (i) A perusal of the Central Act would show that the relevant provisions relating to closure are found in Chapter V-B of the Act covering Sections 25K to 25S. Section 25K, as it stands, provides that Chapter VB applies to industrial establishments employing not less than 100 workmen. Section 25O provides for the procedure for closing down an undertaking. Section 25S H

provides *inter alia* that Section 25J in Chapter V-A shall also apply in relation to an industrial establishment to which the provisions of Chapter V-B would apply. A reading of the said provision and in particular Sub-Section (2) thereof would show that the Central Act would govern the rights and liabilities of both the employers and the workmen insofar as they relate to layoff and retrenchment notwithstanding the State Act laying down provision to the contrary and in that view of the matter the Central Act shall be applicable.

(ii) Reading Sections 25K and 25S of the Central Act along with Section 25J of the Central Act, it is clear that in relation to industrial establishments having more than 100 workmen, the rights of workmen in respect of layoff, retrenchment and closure would have to be decided as per the Central Act, regardless of any State law. Necessarily the procedure under Section 25O would have to be followed in such a case before effecting any closure.

(iii) Sections 6J to 6Q of the State Act providing for layoff and retrenchment although are in *pari materia* with Chapter V-A of the Central Act which contain a non-obstante clause by way of Section 6R titled "Effect of Laws Inconsistent with Section 6J to 6Q" and in terms of Sub-Section (2) whereof the provisions of the State Act were to have effect over any other law inconsistent with Sections 6J to 6Q and in that view of the matter although there was an irreconcilable conflict between the relevant provisions of State Act and the Central Act as has been held by this Court in *U.P. Electricity Supply Co. Ltd.* v. *R.K. Shukla and Anr. Etc.*, [1970] 1 SCR 507; but in relation to Chapter V B there does not exist any such conflict inasmuch as whereas Section 25J has become part of Chapter V-B by reason of Section 25S of the Central Act, Section 6R of the State Act remained unaltered and in that view of the matter the non-obstante clause contained therein make the same prevail over the State Act.

(iv) In terms of Section 25O of the Central Act, the provisions of Chapter V-B would be applicable to an industrial establishment employing one hundred or more workmen; and although in terms of the State Act *inter alia* the provisions relating to those would not apply to industrial establishment employing less than 300 workmen, but there does not exist any irreconcilable or intolerable

A inconsistency as it is possible to apply both the Central Act and the State Act by the employer upon following the procedure laid down under the Central Act and, thus, it is possible for the employer to obey both the laws. There, thus, does not exist any contradiction or repugnancy. Reliance in this behalf has been placed on *M/s. Ram Chandra Mawa Lal, Varanasi and Ors,* v. *State of Uttar Pradesh and Ors.,* [1984] Supp SCC 28, *Zaverbhai Amaidas* v. *The State of Bombay,* [1955] 1 SCR 799, *Municipal Corporation of Delhi* v. *Shiv Shanker,* [1971] 1 SCC 442 and *M. Karunanidhi* v. *Union of India and Anr.* [1979] 3 SCC 431.

C (v) In any event, even assuming that Article 254 of the Constitution would be attracted in the instant case, Sections 6V to 6W of the State Act having received the assent of the President on 10.10.1983 and the Central Act (Act No. 46 of 1982) having been brought into force with effect from 21.8.1984, the question of Presidential Assent of the State Act must be judged. Relying D on *Shyamakantlal* v. *Rambhajan Singh,* (1939) FCR 193, *Ch. Tika Ramji and Ors. etc.* v. *the State of Uttar Pradesh and Ors.,* [1956] SCR 393, *Municipal Council Palai* v. *T.J. Joseph and Ors.,* [1964] 2 SCR 87, *Kerala State Electricity Board* v. *Indian Aluminum Co.,* [1976] 1 SCR 552 and *Belsund Sugar Co. Ltd.* v. *State of Bihar and Ors.,* [1999] 9 SCC 620, Mr. Banerjee E would submit that at the material time when Presidential assent was obtained for the State Act in 1983, there was no repugnancy in fact but there existed merely a future possibility of repugnancy. Seeking to distinguish the decision of this Court in *Rishikesh* (supra) Mr. Banerjee would urge that the same was distinguished F in *M.P. Shikshak Congress and Ors.* v. *R.P.F. Commissioner, Jabalpur and Ors.,* [1999] 1 SCC 396. Furthermore, as it was held as of fact in *Rishikesh* (supra) that there did not exist any conflict, it was argued, the purported law laid down Clause (2) of Article 254 must be held to be a mere obiter.

G (vi) In any event before Clause (2) of Article 254 is applied, a finding of fact must be arrived at that the President was actually informed about the reason for grant of his assent and as no records had been produced by the State showing the proposal placed before the President by it, no inference can be drawn that the same fulfilled the constitutional mandate. Reliance in this behalf has H been placed on *Kaiser-I-Hind Pvt. Ltd. and Anr.* v. *National*

Textile Corpn., (Maharashtra North) Ltd. And Ors., [2002] 8 SCC 182. A

Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the respondent, would, on the other hand, submit that whereas under the State Act the procedure to issue notice before the closure of the industrial undertaking was not required to be followed, the Central Act and the State B Act must be held to be irreconcilable and repugnant to each other. The learned counsel would contend that the provisions of the State Act and the Central Act produce two different legal results and, in that view of the matter, Clause (2) of Article 254 would apply having regard to the fact that the statutory schemes of both the Acts are distinct and different. C

Mr. Bhushan would urge that keeping in view the fact that Clause (2) of Article 254 refers to a Central Act which had already been made, the application thereof at a later stage would be wholly immaterial and irrelevant.

The learned counsel would submit that the decision of this Court in D *M.P. Shikshak Congress* (supra) is not applicable to the fact of the present case whereas the decision in *Rishikesh* (supra) is.

As regard applicability of ratio of this Court in *Kaiser-I-Hind* (supra), Mr. Bhushan, would argue that the decisions relied therein clearly demonstrate that such a question should be raised in the writ petition itself so as to enable E the State Government to bring the relevant documents on records. As the appellant herein did not raise such a contention either in the writ petition or in the Special Leave Petition, the learned counsel would contend, that the appellant should not be permitted to raise the same at this stage particularly having regard to the fact that there exists a presumption as regard legality and validity of an official act. F

As regard applicability of the non-obstante clause contained in Section 25S *vis-a-vis* Section 25J of the Central Act, Mr. Bhushan would submit that the former introduced a non-obstante clause as regard Chapter V-A and, thus, Section 25J cannot be held to have formed a part of Chapter V-B. In any event, he would urge that even if Section 25S *vis-a-vis* Section 25J have an G overriding effect, the constitutional provisions contained in Clause (2) of Article 254 shall prevail thereover.

ANALYSIS:

The Central Act as also the State Act have been enacted in terms of H

A Entry 22 of List III of the Seventh Schedule of Constitution of India. Both Acts were enacted in the year 1947. Chapter V-A of the Central Act relates to layoff and retrenchment which was inserted by Act No. 43 of 1953. Section 25J provides for effect of laws inconsistent with Chapter V-A of the Central Act. It had an overriding effect. The State Act was amended in the year 1957 providing for layoff and retrenchment. It is not in dispute that Section 6R of B the State Act provides for effect of laws inconsistent with Sections 6J to 6Q and in terms of sub-Section (2) thereof, the provision of Section 6R shall be deemed not to affect the provision of any other law for the time being in force.

C The Parliament introduced special provisions relating to layoff, retrenchment and closure by inserting Chapter V-B in the Central Act in certain establishments containing Section 25K to 25S in the year 1976. In terms of Section 25K, Chapter V-B was to apply in an establishment in which not less than 300 workmen are employed. Section 25S provides that certain provisions of Chapter V-A including Section 25J shall apply to an D industrial establishment to which the provisions of Chapter V-B apply.

It may be true that the reason for amending Chapter V-B of the Central Act by reason of Act No. 46 of 1982 *inter alia* was to extend the beneficient provisions to workmen of small establishments by reducing the existing employment limit thence from 300 to 100. But it is equally true that the State E Act was amended by Act No. 26 of 1983 after the amendment of the Central Act. It is not in dispute that Section 25K and Section 25O of the Central Act are in *pari materia* with Sections 6V and 6W of the State Act. We must also notice that whereas the Central Act received the President's Assent on 31.8.1982, the State Act received the President's Assent on 10.10.1983. It is F also not in dispute that by reason of the State Act the Chapter relating to layoff retrenchment and closure was made applicable in relation to an industrial establishment wherein not less than 300 workmen are employed. The amending Act of 1982 was published in Gazette of India on 1.9.1982 and was given effect to from 21.8.1984 whereas the State Act was published in the U.P. Gazette on 12.10.1983 and was given effect to from 3.8.1983.

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CONSTITUTIONAL SCHEME:

Before analyzing the relevant provisions of the State Acts *vis-a-vis* 'the Act', we may have an overview of the constitutional scheme. Articles 245 and 246 of the Constitution of India read with the Seventh Schedule and

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Legislative Lists contained therein prescribe the extent of legislative competence of Parliament and State Legislatures. Parliament has exclusive power to make laws with respect of any of the matters enumerated in List I in the Seventh Schedule. Similarly, State Legislatures have exclusive power to make laws in respect of any of the matters enumerated in List II, but the questions raised herein must be considered keeping in mind the fact that the Parliament and State Legislatures both have legislative power to make laws with respect to any matter enumerated in the Concurrent List.

The various entries in the three Lists are fields of legislation. They are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures. Since legislative subjects cannot always be divided into water tight compartments; some overlappings between List I, II and III of the Seventh Schedule is inevitable.

As in a federal Constitution division of legislative powers between the Central and Provincial Legislatures exists, controversies arise as regards encroachment of one legislative power by the other particularly in cases where both the Union as well as the State Legislation have the competence to enact laws. Article 254 provides that if any provision of a law made by the Legislature of a State is repugnant to any provision made by the Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List then subject to provisions of clause (2), the law made by the Parliament shall prevail to the extent of the repugnancy required.

In terms of clause 2 of Article 254 of the Constitution of India where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to the matters, then the law so made by the Legislature of such State shall, if it has been reserved for consideration of the President and has received its assent, prevail in that State. It is not in dispute that the 1961 Act has received the assent of the President of India and, thus, would prevail over any parliamentary law governing the same field.

Article 254 of the Constitution of India would be attracted only when legislations covering the same ground both by Centre and by the Province operate in the field; both of them being competent to enact. [See *Deep Chand* v. *State of Uttar Pradesh and Ors.*, AIR (1959) SC 648; *M. Karunanidhi* (supra) and *The State of West Bengal* v. *Kesoram Industries Ltd. and Ors.*,

A (2004) 1 SCALE 425.

Recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by the Parliament and the State Legislature occupy the same field, the subsequent legislation made by the State which B had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. Both the laws would ordinarily be allowed to have their play in their own respective fields. However, in the event, there exists any conflict, the Parliamentary Act or the State Act shall prevail over the other depending C upon the fact as to whether the assent of the President has been obtained therefor or not.

The Central Act and the State Act indisputably cover the same field. The jurisdiction of the State Legislature to enact a law by a Parliamentary legislation is not impermissible. Subject to the provisions contained in Article D 254 of the Constitution of India, both will operate in their respective fields. The Constitutional Scheme in this behalf is absolutely clear and unambiguous. In this case, this Court is not concerned with the conflicting legislations operating in the same field by reason of enactments made by the Parliament and the State in exercise of their respective legislative powers contained in List I and List II of the Seventh Schedule of Constitution of India but E admittedly the field being the same, a question would arise as regard the effect of one Act over the other in the event it is found that there exists a conflict. For the said purpose, it is not necessary that the conflict would be direct only in a case wherein the provisions of one Act would have to be disobeyed if the provisions of the other is followed. The conflict may exist F even where both the laws lead to different legal results.

In *Zaverbhai Amaidas* (supra), it is stated:

> "The principle embodied in Section 107 (2) and Article 254 (2) is that when there is legislation covering the same ground both by the G centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

In *M. Karunanidhi* (supra) the fact of the matter was completely different. Therein the scheme of the two Acts was not in conflict with each other. This Court referred to Colin Howard's Australian Federal Constitutional Law, 2nd H Edition, *Hume* v. *Palmer,* 38 CLR 441 (Aus), *Zaverbhai Amaidas* (supra),

Tika Ramji (supra), *Deep Chand* (supra) and *State of Orissa* v. *M.A. Tulloch and Co.*, [1964] 4 SCR 461 opining:

> "1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field.
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> 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
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> 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
>
> 4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

The judgments of this Court clearly lay down the law to the effect that if two Acts produce two different legal results, a conflict will arise.

The State Act lays down a complete exhaustive code. It covers the same subject-matter as contained in Sections 25K and 25O of the Central Act. Both the State Act and the Central Act contain penal provisions. If the procedures laid down in the Central Act are not applicable, a person need not comply the provisions therein keeping in view the fact that its industrial establishment is covered by the State Act in terms whereof the applicability of the relevant provisions would be attracted only when the establishment employees more than 300 persons.

In *Tika Ramji* (supra), the question which arose for consideration was as to whether there existed a repugnancy between the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 which was enacted in terms of Entry 33 of List III of the Seventh Schedule of the Constitution and the notifications issued thereunder *vis-a-vis* the Industries (Development and Regulation) Act, 1951. The Court referred to Nicholas's Australian Constitution, 2nd Ed. Page 303, which reads thus :

> "(1) There may be inconsistency in the actual terms of the competing statutes (R.V. Brisbane Licensing Court, (1920 28 CLR 23).

(2) Though there may be no direct conflict, a State law may be inoperative because the Common-wealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code *Clyde Engineering Co. Ltd.* v. *Cowburn,* (1926) 37 C.L.R. 466.

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter [*Victoria* v. *Commonwealth,* (1937) 58 C.L.R. 618; *Wenn* v. *Attorney-General (Vict.),* (1948) 77 C.L.R. 84] Isaacs, J. In *Clyde Engineering Company, Limited* v. *Cowburn* laid down one test of inconsistency as conclusive : "If, however, a competent legislature *expressly or implicitly evinces its* intention to cover the whole field, that *is a conclusive test of inconsistency* where another Legislature assumes *to enter to any extent upon the same* field"."

In a case, thus, where both the State Act and the Central Act have been enacted in terms of List III of the Seventh Schedule of the Constitution of India, the question of repugnancy as envisaged under Article 254 would arise. In that type of cases, it is well-settled that in absence of Presidential Assent, the Parliamentary Act would prevail and where the assent has been received, the State Act would. [See also *M.P.A.I.T. Permit Owners Assn. and Anr.* v. *State of Madhya Pradesh,* (2003) 10 SCALE 380].

The question again came up for consideration before a Constitution Bench of this Court in *ITC Ltd.* v. *Agricultural Produce Market Committee and Ors.,* [2002] 9 SCC 232. The majority applied *Tika Ramji* (supra) having regard to both the positive test and negative test evolved therein. One of us (Sabharwal, J.) proceeded to uphold the market fee levied on tobacco on the basis that Parliament was not competent to pass legislation in respect of sale of agricultural produce of tobacco covered by Entry 52 of the Union List under which the Parliament can legislate only in respect of the industries, namely, "the process of manufacture or production". It was held that the activity regarding sale of raw tobacco as provided in the Tobacco Board Act would not be regarded as "industry".

Ruma Pal, J. in her concurring judgment observed :

"To sum up: the word 'Industry' for the purposes of Entry 52 of List I has been firmly confined by Tika Ramji to the process of manufacture

or production only. Subsequent decisions including those of other Constitution Benches have re-affirmed that *Tika Ramji* case authoritatively defined the word 'industry' - to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word 'industry'. Whatever the word may mean in any other context, it must be understood in the Constitutional context as meaning 'manufacture or production'."

Pattnaik, J., however, for himself and Bharucha, J. (as the learned Chief Justices then were) observed:

"In view of the aforesaid rules of interpretation as well as the Constitution Bench decision referred to above, it is difficult for us to accept the contention of Mr. Dwivedi that the word "industry" in Entry 52 of List I should be given a restricted meaning, so as to exclude from its purview the subject of legislation coming within entry 27 or Entry 14 of List II. Bearing in mind the constitutional scheme of supremacy of Parliament, the normal rule of interpretation of an Entry in any of the lists in the Seventh Schedule of the Constitution, the object of taking over the control of the tobacco industry by the Parliament, on making a declaration as required under Entry 52 of List I and on examining the different provisions of the Tobacco Board Act, we see no justification for giving a restricted meaning to the expression "industry' in Entry 52 of List I, nor do we find any justification in the contention of the counsel appearing for the States and also different Market Committees that the provisions contained in Tobacco Board Act dealing with the growing of tobacco as well as making provisions for sale and purchase of tobacco, must be held to be beyond the legislative competence of Parliament, as it does not come within the so-called narrow meaning of the expression "industry" on the ground that otherwise it would denude the State Legislature of its power to make law dealing with markets under Entry 28, dealing with agriculture under Entry 14 and dealing with goods under Entry 27 of List II. Such an approach of interpretation in our considered opinion would be against the very scheme of the constitution and supremacy of Parliament and such an approach towards interpreting the power sharing devices in relation to entries

A in List I and List II would be against the thrust towards centralisation. In our considered opinion, therefore, the word "industry' in Entry 52 of List I should not be given any restricted meaning and should be interpreted in a manner so as to enable the Parliament to make law in relation to the subject which is declared and whose control has been taken over to bring within its sweep any ancillary matter, which B can be said to be reasonably included within the power and which may be incidental to the subject of legislation, so that Parliament would be able to make an effective law. So constructed and on examining different provisions of the Tobacco Board Act, we do not find any lack of legislative competence with Parliament so as to enact C any of the provisions contained in the said Act, the Act in question having been enacted by Parliament on a declaration being made of taking over of the control of the Tobacco industry by the Union and the Act being intended for the development of the said industry.

Keeping in view the constitutional scheme *vis-a-vis* the Central Act and D the State Act, we are of the opinion that there exists a conflict and, thus, Article 254 of the Constitution would be attracted.

Date of Coming into Force of the Central Act - Is it material?

The phraseology used in Article 254 of the Constitution of India is E clear and unambiguous. It does not contemplate coming into effect of a law having regard to the nature of the legislation as a conditional one. It in no uncertain terms states that the conflict is required to be found out keeping in view a law which has already been made. The makers of the Constitution deliberately and consciously used past tense. It has, thus, to be given its F ordinary meaning.

So far as the decisions of this Court in *Rishikesh* (supra) and *M.P. Shikshak Congress* (supra) are concerned, suffice it to state that in the former a question did arise as to the applicability of the Central law *vis-a-vis* the State amendment which was answered saying:

G "17... The emphasis as rightly stressed by Shri Parag is "any amendment to CPC made by the State Legislature or a provision by the High Court" before the 'commencement' of this Act stood repealed. It is to be noted here that the Central Act is an Amending Act, not a repealing and consolidating statute to supplant the principal Act, H namely, Act 5 of 1908. Since CPC is a concurrent subject, Parliament

and the Legislature of State or a High Court in respect of orders in the Schedule are competent to enact or amend CPC respectively. In fact several local amendments made to CPC before the commencement of the Central Act do exist. Pursuant to the recommendation made by the Law Commission of India to shorten the litigation, Parliament made the Central Act to streamline the procedure. It is true that inconsistency in the operation of the Central and the State law would generally arise only after the respective Acts commenced their operation. Section 3(13) of the General Clauses Act defines 'commencement' to mean the day on which the Act or Regulation comes into force. The Founding Fathers were cognizant to the distinction between making the law and commencement of the operation of the Act or Regulation. Article 254, clauses (1) and (2) and in a way Section 97 of the Central Act are also alive to the distinction between making the law and commencement of the law. In Collins English Dictionary, at p. 889 'make' is defined to mean, to "cause to exist", "to bring about" or "to produce". In Black's Law Dictionary, 6th Edn. at p. 955, 'make' is defined as "to cause to exist... to do in form of law; to perform with due formalities; to execute in legal form;...". The verb 'made' in Article 254 brings out the constitutional emanation that it is the making of the law by the respective constituent legislatures, namely, Parliament and the State Legislature as decisive factor. Commencement of the Act is distinct from making the law. As soon as assent is given by the President to the law passed by Parliament it becomes law. Commencement of the Act may be expressed in the Act itself, namely, from the moment the assent was given by the President and published in the Gazette, it becomes operative. The operation may be postponed giving power to the executive or delegated legislation to bring the Act into force at a particular time unless otherwise provided. The Central Act came into operation on the date it received the assent of the President and shall be published in the Gazette and immediately on the expiration of the day preceding its commencement it became operative. Therefore, from midnight on the day on which the Central Act was published in the Gazette of India, it became the law. Admittedly, the Central Act was assented to by the President on 9-9-1976 and was published in the Gazette of India on 10-9-1976. This would be clear when we see the legislative procedure envisaged in Articles 107 to 109 and assent of the President under Article 111 which says that when a Bill has been

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A passed by the House of the People, it shall be presented to the President and the President shall either give his assent to the Bill or withhold his assent therefrom. The proviso is not material for the purpose of this case. Once the President gives assent it becomes law and becomes effective when it is published in the Gazette. The making of the law is thus complete unless it is amended in accordance with the procedure prescribed in Articles 107 to 109 of the Constitution. Equally is the procedure of the State Legislature. Inconsistency or incompatibility in the law on concurrent subject, by operation of Article 254, clauses (1) and (2) does not depend upon the commencement of the respective Acts made by Parliament and the State Legislature. Therefore, the emphasis on commencement of the Act and inconsistency in the operation thereafter does not become relevant when its voidness is required to be decided on the anvil of Article 254(1). Moreover, the legislative business of making law entailing with valuable public time and enormous expenditure would not be made to depend on the volition of the executive to notify the commencement of the Act. Incompatibility or repugnancy would be apparent when the effect of the operation is visualised by comparative study."

It was further held:

"18...The legislative business done by the appropriate State Legislature cannot be reduced to redundancy by the executive inaction or choice by the Central Government by issuing different dates for the commencement of different provisions of the Central Act. The Constitution, therefore, made a clear demarcation between making the law and commencement of the law which, therefore, bears relevance for giving effect to Article 254."

It was, therefore, a case where having regard to the authority delegated to the executive the Act was to come into effect at a later date.

In *M.P. Shikshak Congress* (supra), on the other hand, the Central Act had no application in relation to educational institution whereas the State Act did. Only by reason of a legislative action, the Act was extended to educational institutions and, thus, evidently, the question of repugnancy arose and not prior thereto upon the provisions of the Act being extended to a thitherto uncovered field. In *M.P. Shikshak Congress* (supra), the matter involved application of law whereas in *Rishikesh* (supra) the question was enforcement

of an Act. Both situations stand on different footings. A

Keeping in view the plain language used in Article 254(2) of the Constitution of India we are of the opinion that the State Act in the fact and circumstance of this case, keeping in view the Presidential Assent given thereto shall prevail over the Central Act. B

Kaiser-I-Hind:

It is true that this Court held that with a view to giving meaningful assent by the President, placing the matter before the President reserving for his consideration bring to his notice purported conflict is not an empty formality. Shah, J. speaking for the majority observed: C

> "20. It is true that President's assent as notified in the Act nowhere mentions that assent was obtained *qua* repugnancy between the State legislation and specified certain law or laws of the Parliament. But from this, it also cannot be inferred that as the President has given assent, all earlier law/laws on the subject would not prevail in the State. As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by the Parliament on the same subject. If the proposal made by the State is limited *qua* the repugnancy of the State law and law or laws specified in the said proposal, then it cannot be said that the assent was granted *qua* the repugnancy between the State law and other laws for which no assent was sought for. Take for illustration that a particular provision, namely, Section 3 of the State law is repugnant to enactment 'A' made by Parliament; other provision namely Section 4 is repugnant to some provisions of enactment 'B' made by Parliament and Sections 5 and 6 are repugnant to some provisions of enactment 'C' and the State submits proposal seeking 'assent' mentioning repugnancy between the State law and provisions of enactments 'A' and 'B' without mentioning anything with regard to enactment 'C'. In this set of circumstances, if the assent of the President is obtained, the State law with regard to enactments 'A' and 'B' would prevail but with regard to 'C', there is no proposal and hence there is no 'consideration' or 'assent'. Proposal by the State pointing out repugnancy between the State law and of the law enacted by the Parliament is a *sine qua non* for 'consideration' and 'assent'. If there is no proposal, no question

A of 'consideration' or 'assent' arises. For finding out whether 'assent' given by the President is restricted or unrestricted, the letter written or the proposal made by the State Government for obtaining 'assent' is required to be looked into."

The question, however, is to be considered having regard to the fact B situation obtaining herein. The conflict between the Central Act and the State Act was apparent. The State of Uttar Pradesh inserted Section 6V by Act No. 26 of 1983 being conscious of the fact that an Act had been passed to the contrary by the Parliament in terms of Act No. 46 of 1982. So long Chapter V-B was applicable to an industrial establishment engaging 300 or more C persons, the State did not insert any provision and allowed the Parliament to occupy the field relating to layoff, retrenchment and closure of industrial undertakings. Only when the number of workmen having regard to the legislative policy as would appear from the Statements of Objects and Reasons was brought down to 100 from 300 for the purpose of applicability of Chapter V-B of the Central Act, the amendment was brought in by the State. The D provisions contained in Section 6V by reason of the 1983 Amendment by the Legislature of the State of Uttar Pradesh must have made consciously in relation whereto only the legislation was reserved for the Presidential Assent. If the contention of the appellant was that the assent of the President was obtained without clearly informing him the purpose for which the same was E sought for, it was necessary for them to raise such a plea in this behalf in the writ petition. Not only such a plea had not been raised in the writ petition or before the High Court, no such plea has been raised even in the Special Leave Petition. We agree with Mr. Jayant Bhushan that in such a situation, the appellant should not be permitted to raise the said question. We would, therefore, proceed on the presumption that the State amended the Act having F regard to the provisions of the Central Act and the Presidential Assent was sought for only on account thereof.

Section 114 (e) of the Indian Evidence Act raises a presumption that all official acts must have been performed regularly. Section 114(f) of the said Act raises a presumption that the common course of business has been followed G in particular cases. The said presumptions, therefore, would apply in this case also. In any event, we do not find any reason to allow the appellant to raise the said plea before this Court for the first time.

EFFECT OF NON-OBSTANTE CLAUSE:

H The contention of Mr. Banerjee to the effect that Section 25J of the

Central Act has been incorporated by reference in Section 25S cannot be accepted. Section 25S does not introduce a non-obstante clause as regard Chapter V-A. Furthermore, Section 25J is not a part of Chapter V-B. By reason of Section 25S, the provisions of Chapter V-A were made applicable only in relation to certain establishments referred to in Chapter V-B. The Parliament has deliberately used the words "so far as may be" which would also indicate that provisions of Chapter V-B were to apply to the industrial establishments mentioned in Chapter V-A. The non-obstante clause contained in Section 25J does not apply to the entire Chapter V-B. Applicability of Chapter V-A in relation to the industrial establishments covered by Chapter V-B in terms of Section 25J *vis-a-vis* Section 25S is permissible but the contention cannot be taken any further so as to make Section 25O of the Central Act prevail over the State Act by taking recourse to the non-obstante clause. Non-obstante clause contained in Section 25J is, thus, required to be kept confined to Chapter V-A only and in that view of the matter we have no hesitation in holding that Chapter V-B does not have an overriding effect over the State Act.

In any event, such a question could have arisen for consideration if the Central Act and the State Act had been enacted in terms of different entries of List I and List II of the Seventh Schedule of the Constitution of India. In this case, admittedly both the Central Act and the State Act had been enacted in terms of Entry 22 of List III of the Seventh Schedule of Constitution of India. In case of any conflict therefor the constitutional scheme contained in Article 254 will have to be applied. Even if Section 25S of the State Act is read to have an overriding effect, undoubtedly the provisions of the supreme lax shall prevail over a statute. A non-obstante clause contained in a statute cannot override the provisions of the Constitution of India.

CONCLUSION:

For the foregoing reasons, we are of the opinion that there is no merit in these appeals which are accordingly dismissed. No costs.

N.J. Appeals dismissed.