

CASE NO.:

Appeal (civil) 2555 of 1991
Appeal (civil) 1320 of 1991
Appeal (civil) 1351 of 1991
Appeal (civil) 2218 of 1991
Appeal (civil) 2622 of 1991
Appeal (civil) 2623 of 1991
Appeal (civil) 3047 of 1991
Appeal (civil) 3053 of 1991
Appeal (civil) 2192 of 1991

PETITIONER:

Kaiser-I-Hind Pvt. Ltd. & Ors.

RESPONDENT:

National Textile Corporation Ltd.

DATE OF JUDGMENT: 25/09/2002

BENCH:

D.M. Dharmadhikari

JUDGMENT:

J U D G M E N T

Dharmadhikari J.

After going through the opinion of learned Brother M. B. Shah J, with utmost respect, I find myself unable to agree with his view.

The main question that needs decision by this Constitution Bench is on the application of Article 254 of the Constitution of India. Learned Brother Shah J, in his opinion, has already reproduced Article 254 and discussed relevant decisions of the Supreme Court and other High Courts cited by the counsel of the parties at the Bar. I would not, therefore, burden the record with repetition of the same.

It is not in dispute that there is a clear repugnancy between the provisions of Bombay Rents (Hotel and Lodging House Rates) Control Act 1947, as has been extended from time to time, after coming into force of the Constitution in its application, to erstwhile State of Bombay and to the present State of Maharashtra and Public Premises (Eviction and Unauthorized Occupants) Act 1977. The two Acts mentioned above would hereinafter be referred to as the 'State Act' and the 'Central Act' respectively.

Under the provisions of the State Act, all occupants of leased or licensed premises including those owned by government companies and corporations have protection against their eviction which can be granted only on proof of specified grounds before the competent authority. In accordance with the Central Act, the premises belonging to government companies and corporations which are in occupation of tenants and licensees can be got evicted by the prescribed summary procedure after service of notice to the occupier of the alleged unauthorized occupation.

The State Act of 1947 was the pre-constitutional law and 'existing law' for application of Article 254 read with definition of that expression 'existing law' in Clause 10 of Article 366. The said 'existing law' by virtue of Extension Laws passed from time to time by the

State Legislature continued in force after coming into force of the Constitution.

The Central Law of 1977 is post-constitutional law and as an effect of Clause (1) of Article 254, in view of its admitted and clear repugnancy with State Law, the former would have prevailed; but Clause (2) is an exception to Clause (1) of Article 254 and if the State Law has received 'assent of the President' and the subject of Legislation is in Concurrent List, the State Law prevails in its application to the State.

The State Act of 1947 which was a pre-constitutional law after it was extended by various Extension Laws (mentioned in detail in the opinion of learned Brother Shah J.) became a post-constitutional law. In order to prevail over the Central Law, the State Law required the 'assent of the President' in accordance with Article 254 (2) of the Constitution. It is not in dispute that the subject matter of Central and State Legislation is covered by entries in the Concurrent List of Seventh Schedule of the Constitution.

It is also not in dispute that the 'assent of the President' has been obtained to each of the State Acts which were passed after coming into force of the Constitution, either to extend the duration of 'existing law' of 1947 or to extend its application with amendments to the State. The file containing proposals which were moved for obtaining 'assent of the President' was not produced by any of the parties but was summoned by the Court. A perusal of file containing proposals moved for obtaining the 'assent of the President' shows that each time, the Extension Law was passed with or without amendments for extending duration of the 'existing law' that is Bombay Act of 1947, its repugnancy to Central Laws like Transfer of Property Act 1882 and Presidency Small Causes Courts Act 1882, the Indian Contract Act 1892 and Civil Procedure Code, was pointed out but there is no specific mention of its repugnancy to the Central Act under consideration before us. It is on the basis of the letters of the State addressed to the Government of India containing the proposals for obtaining 'assent of the President', learned Brother Shah J, has come to the conclusion that there is no 'Presidential Assent' sought or obtained to the State Act qua the Central Act under consideration before us. Such a conclusion on reading of the file containing the proposals is not borne out. Two specific proposals relied on behalf of the appellants from the letters dated 15.12.1980 and 27.1.1986, need mention and reproduction in its relevant parts. They read as under :-

(1)

No.BRA 2180/CR-3222/DESK-3.

Housing and Special Assistance Department
Mantralaya, Bombay 400 032

15th December, 1980

To,

The Secretary to Government of India,
Ministry of Home Affairs,
New Delhi.

Sub : Bill of extend the duration of the Bombay Rent, Hotel and Lodging Houses Rate Control Act 1974 upto 31st March, 1986.

Sir,

The subject matter of the Bill falls under entries 3, 5, 18, 31, 35, 49, 64 and 65 in List-II and entries 1, 2, 6, 7, 11-A and 46 in a List-III in the Seventh Schedule of the Constitution of the India. As the provisions of the Principal Act are repugnant to the provisions of some of the existing laws relating to entries 6, 13, 46 in the concurrent Legislative List such as Transfer of Property Act 1882 and the Presidency Small Causes Courts Act 1882 and Clause (2) of the Bill is intended to extend the life of the Principal Act by a further period of five years i.e. upto 31.3.1986, it is necessary to reserve the Bill after it is passed for consideration and the assent of the President under Article 254(2) of the Constitution of India after it is passed by the State Legislature. Further as the subject matter of the Bill falls under the entries relatable to the Concurrent Legislative List and administrative approval of the Government of India is required to be obtained before it is introduced in the State Legislature. I am, therefore, to request you to move the Government of India to kindly accord their administrative approval to the proposed Bill.

(2)

GOVERNMENT OF MAHARASHTRA

No. 1419/B

LAW AND JUDICIARY DEPARTMENT
Mantralaya, Bombay 400 032

Dated : 27th Jan., 1986
To,

The Secretary to the
Governor of Maharashtra,
Raj Bhawan, Bombay 400 035.

Sub : L.C. Bill No. X of 1986
The Bombay Rents, Hotel and Lodging House Rates Control
(Extension of Duration) Bill, 1986.

Sir,

The subject matter of the Bill falls under entries 3, 5, 18, 31, 35, 49, 64 and 65 in List-II and entries 1, 2, 6, 7, 11-A, 12, 13 and 46 in List-III in the Seventh Schedule to the Constitution of India. As the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 are repugnant to the provisions of the Transfer of Property Act 1882 and the Presidency Small Cause Courts Act 1882 which are the existing laws relating to entries 6, 13 and 46 in the Concurrent Legislative List and as Clause 2 of the Bill is intended to extend the life of the Principal Act for a period of five years, it is necessary to reserve the Bill for the consideration and assent of the President with reference to article 254(2) of the Constitution of India.

Several letters addressed from time to time to the Government of India by the State for obtaining 'assent of the President', which are contained in the file, are somewhat similar in wording and phraseology. From the contents of letter dated 15.12.1980, what is to be noted (as reproduced above) is that entries 1,2,6,7,11-A and 46 in List-III that is the Concurrent List in the Seventh Schedule of the Constitution have been specifically mentioned. The language of the proposals contained in the letter is noteworthy. It reads : "the

provisions of some of the existing laws relating to entries 6, 13, 46 in the Concurrent Legislative List such as Transfer of Property Act 1882 and the Presidency Small Cause Courts Act 1882..".

Similarly, in the proposals contained in letter dated 27.1.1986, there is specific mention of entries 1, 2, 6, 7, 11-A, 12, 13 and 46 of Concurrent List in Seventh Schedule of the Constitution with specific mention of repugnancy to the provisions of Transfer Property Act 1882 and Presidency Small Cause Courts Act 1882.

Each time when the proposal was moved for obtaining Presidential sanction, relevant entries of the Concurrent List have been mentioned. It is not disputed that the Central Act under consideration covers entries 6 and 7 of the Concurrent List which are specifically mentioned in the proposal. In the letter dated 15.12.1980, while moving proposal for obtaining assent, it has been very clearly mentioned that the State Act is repugnant to "some of the existing laws relating to entries 6, 13 and 46 in the Concurrent Legislative List" and the above language is followed by words "such as" with words following them 'Transfer of Property Act' and 'Presidency Small Cause Courts Act'. The mention of entries in the Concurrent Legislative List including entry 6 which covers the Central Act and use of such expression as repugnancy to "some of the existing laws" relating to the entries mentioned in Concurrent List followed by use of words "such as" clearly go to show that 'assent of the President' was obtained in a general way to give overriding effect to the State Law which is admittedly repugnant to many Central Laws referable to various entries in the Concurrent List. Mention of Central Acts was not exhaustive but only illustrative, otherwise the language, in the proposal contained in the letters of the State Government, would have been different.

On such an 'assent of the President' having been granted in general way to the State Act to give it an overriding effect over all repugnant Central Acts on legislative fields covered by specific entries of the Concurrent List, it is not open to the Court to interpret differently the contents of the letters in the file and come to a conclusion that the 'assent of the President' was restricted only to Central Acts mentioned in the proposal and non-mention of the present Central Act was an indication of the mind of the President that no assent was given to the State Act qua the present Central Act.

Learned Brother Shah J. has taken note of all the previous decisions of this court and other High Courts cited by the counsel for the parties at the Bar. The file containing proposals for obtaining assent of the President was summoned and perused. This exercise of going into the contents of the file was undertaken with the limited purpose of finding out whether the 'assent of the President' to the State Act, in fact, existed or not. Learned Brother Shah J. accepts the legal position that the court cannot go into the question of validity or invalidity of the 'assent of the President' and the scrutiny of the file containing proposals moved for seeking 'assent of the President' is limited to find out whether, in fact, 'assent' has been granted to the State Act or not and to what extent it has been granted. Law has also been taken note of on the basis of previous decisions of this court that 'Presidential assent' can be obtained qua specific Central Acts and also in a general way.

As discussed above by me on the contents of two letters containing proposals for 'assent of the President', it is evident that the 'assent' was obtained in a general way by making mention of relevant entries of the Concurrent List and a few repugnant Central enactments illustratively and not exhaustively. The 'assent of the President' was sought in the manner mentioned above and granted.

The preamble of the State Act as notified and published in the Government Gazette contains a declaration that the State Act has received an 'assent of the President' under Article 254(2) of the Constitution. Such declaration of receipt of 'assent of the President' is to be found in the preamble of all Extension Laws passed after coming into force of the Constitution.

I do not find myself persuaded to agree with the view that 'assent of the President' is subject of legislative procedure. In giving overriding effect to the State Law over Central Laws covered by entries in Concurrent List, the grant of 'assent' by the President in exercise of powers under Clause (2) of Article 254 is a substantive legislative act. It cannot be described merely as part of legislative procedure. It is only the President who is empowered to exercise that legislative power in the event of inconsistency between the State Law and Central Law. Such legislative power has been given by the Constitution only to the President and exercise thereof involves no other procedure. In granting or refusing 'assent' to a State Act which is repugnant to Central Law, the President alone exercises the legislative function. The provision in Article 254 (2) is a substantive provision on the subject of resolving conflict between State and Central Law when both are legislation on entries in Concurrent List. Obtaining and giving 'assent by the President' is not part of any legislative procedure because in the event of conflict between State and Central Law on legislative fields in Concurrent List, the subject does not go either to Parliament or to the State Legislature. In the event of conflict between State and Central Law, the only legislative activity involved and to be exercised by the President is to give an 'assent' for giving overriding effect to the State Law or withhold such assent to allow Central Law to override the State Law in its application to the concerned State.

The action of the President of granting 'assent' being a legislative Act, it is not open to the Court to sit in judicial review over it. The laws are enacted and notified for knowledge of law enforcing agencies and general public who are affected by it. When an Act duly notified and published contains a declaration in its preamble, of the law having received 'assent of the President' such declaration becomes part of the Act and it is not open to the court to go into the question whether the President had, in fact, applied his mind to the alleged repugnancy of the State Act to a particular Central Act. The President occupies the highest constitutional office and by virtue of privilege and protection available to him under Article 361 of the Constitution, he is not made answerable personally to any court with regard to the discharge of his constitutional functions.

The validity of the State Act is not under challenge nor any material was produced by the State and Central Governments before the court as to what weighed with President in granting assent to the State Act under Article 254(2) of the Constitution. Merely on the basis of the contents of the letters contained in the file summoned and perused by the court, it is not possible to ascertain whether there was due application of mind of the President to the repugnancy between the State and the Central Act under consideration before us. It is not possible for the court to probe into the mind of the President why and how he exercised his power of granting or refusing 'assent' under Article 254. In my considered opinion, the court cannot go behind the declaration duly notified and published in the Government Gazette containing the text of the State Act with preamble therein stating that it has received 'assent of the President' under Article 254(2).

The question whether Central Act, in its application to leased and licensed premises of government companies and corporations, should be regulated by Central Act to make available to the owners of those premises a summary procedure of eviction or they be governed by State Act with protection extended to occupants on specified

circumstances and grounds is a matter purely of legislative wisdom and beyond judicial review.

I may also add that State Act of 1947 was an 'existing law' as defined in Clause (10) of Article 366 at the time of coming into force of the Constitution, because it was a pre-constitutional law. Explanation III to Article 372 makes it clear that any "existing law" which was a temporary law in force because of its limited duration would not continue if it had expired before the Constitution came into force. The said "existing law" which was revived and extended by State Laws made from time to time with or without amendments by the State Legislature, after coming into force of the Constitution, is a post-constitutional law. The 'existing law' of 1947 and all Extension Laws passed by the State Legislature after coming into force of the Constitution made them all post-constitutional laws and each of them has received 'assent of the President' because of its repugnancy to the Central Act. I do not find it relevant that the Extension Laws passed from time to time were only for the purpose of continuing the 'existing law' or pre-constitutional law of 1947 in the same form. The fact remains that 'Extension Laws' made from time to time to revive State Act of 1947, in its application to the States after the Constitution, were legislations of the State Legislature on one of the entries in the Concurrent List and each time because of their repugnancy to the Central Law, they were assented to by the President to give them overriding effect. My understanding of the proposals contained in the file is that the 'assent of the President' was obtained each time in a general way by referring to some of the Central Laws covered by the relevant entries in the Concurrent List.

My conclusion, therefore, is that the 'assent of the President' to the State Act having been obtained in a general way, State Act would prevail over the Central Act.

Consequently this appeal and all connected appeals and writ petitions on this point succeed. The impugned order of the High Court of Bombay deserves to be set aside. The cases be sent to competent courts for deciding remaining legal and factual questions as are involved in each of them. The cost incurred in this court in each case shall abide the final result of the each case. The connected SLPs are accordingly disposed of.