REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6660 OF 2005

State of Kerala & Ors. ... Appellant(s)

versus

M/s. Mar Appraem Kuri Co. Ltd. & Anr. ... Respondent(s)

with Civil Appeal Nos. 6661/2005, 6662/2005, 6663/2005, 6664/2005, 6665/2005, 6666/2005, 6667/2005, 6668/2005, 6669/2005, 6670/2005, 6671/2005, 6672/2005, 6673/2005, 6674/2005, 6675/2005, 6676/2005, 6677/2005, 6678/2005, 6679/2005, 6680/2005, 6681/2005, 7204/2008, 7329/2008, 7330/2008, 7333/2008, 7334/2008, SLP(C) Nos. 25822 and 25823/2009, Civil Appeal Nos. 7008/2005, 7009/2005, 7010/2005, 7011/2005, 7012/2005, 7013/2005, 7014/2005, 7164/2005, 7165/2005, 7166/2005, 7167/2005, 7537/2005, 7538/2005, 494/2006, 495/2006, 5031/2006, 7332/2008, 7572/2008 and 5032/2006

J U D G M E N T

S. H. KAPADIA, CJI

Introduction

1. By order dated 18.02.2009 in Civil Appeal No. 6660 of 2005 in the case of State of Kerala v. M/s. Mar Appraem Kuri Co. Ltd., the referring Bench of 3-judges of this Court doubted the correctness of the view taken by a 3-judges Bench of this Court in **Pt. Rishikesh and Another v. Salma Begum (Smt)**

[(1995) 4 SCC 718]. Accordingly, the matter has come to the Constitution Bench to decide with certitude the following core issues of constitutional importance under Article 254(1) of the Constitution.

Scope of the Reference – when does repugnancy arise?

2. In the present case, the question to be answered is - whether the Kerala Chitties Act 23 of 1975 became repugnant to the Central Chit Funds Act 40 of 1982 under Article 254(1) upon *making* of the Central Chit Funds Act 40 of 1982 (i.e. on 19.08.1982 when the President gave his assent) or whether the Kerala Chitties Act 23 of 1975 would become repugnant to the Central Chit Funds Act 40 of 1982 as and when notification under Section 1(3) of the Central Chit Funds Act 40 of 1982 bringing the Central Act into force in the State of Kerala is issued?

3. The question arose before the Full Bench of the Allahabad High Court in the case of **Smt. Chandra Rani and others v. Vikram Singh and others [1979 All. L.J. 401]** in the following circumstances:- The U.P. Civil Laws (Reforms and Amendment) Act 57 of 1976 being the **State Act** stood enacted on 13.12.1976; it received the assent of the President on 30.12.1976; it was published in the Gazette on 31.12.1976

and brought into force w.e.f. 1.01.1977 whereas the Civil Procedure Code (Amendment) Act 104 of 1976, being the **Central Act**, was enacted on 9.09.1976; it received the assent of the President on the same day; it got published in the Central Gazette on 10.09.1976; and brought into force w.e.f. 1.02.1977 (i.e. after the **State Act** came into force). The Full Bench of the Allahabad High Court in **Chandra Rani (supra)** held that the U.P. Act No. 57 of 1976 was a later Act than the Central Act No. 104 of 1976. The crucial date in the case of the said two enactments would be the dates when they received the assent of the President, which in the case of the Central Act was 9.09.1976 while in the case of the U.P. Act was 30.12.1976. This decision of the Full Bench of the Allahabad High Court in the case of **Chandra Rani (supra)** came for consideration before this Court in **Pt. Rishikesh (supra).**

4. The statement of law laid down in **Pt. Rishikesh (supra)** was as under:

> "17... As soon as assent is given by the President to the law passed by the 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 the mid-night 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 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 the 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."

5. The above statement of law in **Pt. Rishikesh (supra)** created a doubt in the minds of the referring judges and,

accordingly, the said statement of law has come before the Constitution Bench of this Court for its authoritative decision.

Facts in the present case

6. The lis in the present case arose under the following circumstances. Many of the private chitty firms remained out of the regulatory mechanism prescribed in the Kerala Chitties Act, 1975 by registering themselves outside the State but continued to operate in Kerala. Because of this, investor protection became difficult. Consequently, Section 4 of the said 1975 Act was amended vide Finance Act 7 of 2002. By the said amendment, sub-section (1a) was inserted in Section 4. This amendment intended to bring in chitties registered outside the State having 20% or more of its subscribers normally residing in the State within the ambit of the said 1975 Act. Being aggrieved by the said Amendment, the private chitty firms challenged the vires of Section 4(1a) of the 1975 Act as repugnant under Article 254(1) to the Central Chit Funds Act, 1982.

Questions to be answered

7. (i) Whether making of the law or its commencement brings about repugnancy or inconsistency as envisaged in Article 254(1) of the Constitution?

(ii) The effect in law of a repeal.

Inconsistencies in the provisions of the Kerala Chitties Act, 1975 vis-a-vis the Central Chit Funds Act, 1982

8. The impugned judgment of the Division Bench has accepted the contention advanced on behalf of the private chitty firms that there are inconsistencies between the provisions of the two Acts. [see paras 13, 14 and 15 of the impugned judgment]. However, the Single Judge held that absent notification under Section 1(3) of the Central Chit Funds Act, 1982 bringing the said 1982 Act into force in the State and absent framing of the Rules under Section 89 of the said 1982 Act, it cannot be said that the Kerala Chitties Act, 1975 stood repealed on the enactment of the said 1982 Act, which is the Central Act; whereas the Division Bench declared Section 4(1a) of the 1975 Act as extra-territorial and, consequently, unconstitutional, hence, the State of Kerala came to this Court by way of appeal.

9. For the sake of clarity some of the conflicting provisions indicated in the impugned judgment are set out herein below:

Kerala Chitties Act, 1975 (State Act)	The Chit Funds Act, 1982 (Central Act)
Section 1 – Short title, extent and commencement	Section 1 - Short title, extent and commencement

(1) This Act may be called the Kerala Chitties Act, 1975 (2) It extends to the whole of the State of Kerala. (3) It shall come into force on such date as the government may, by notification in the Gazette, appoint.	(1) This Act may be called the Chit Funds Act, 1982. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.
Section 2 - Definitions In this Act, unless the context otherwise requires,— (4) "discount" means the amount of money or quantity of grain or other commodity, which a prize winner has, under the terms of the variola, to forego for the payment of veethapalisa, foreman's commission or such other expense; as may be prescribed;	Section 2 - Definitions In this Act, unless the context otherwise requires,— (g) "discount" means the sum of money or the quantity of grain which a prized subscriber is, under the terms of the chit agreement required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscribers or for both;
Section 3 - Prohibition of chitty not sanctioned or registered under this Act (1) No chitty shall, after the	Section 4 - Prohibition of chits not sanctioned or registered under the Act (1) No chit shall be commenced

commencement of this Act, be started and conducted unless the previous sanction of the Government or of such officer as may be empowered by the Government in this behalf is obtained therefor and unless the chitty is registered in accordance with the provisions of this Act: Provided that the previous sanction under this sub-section shall lapse unless the chitty is registered before the expiry of six months from the date of such sanction: Provided further that such previous sanction shall not be necessary for starting and conducting any chitty by— (i) a company owned by the Government of Kerala; or (ii) a co-operative society registered or deemed to be registered under the Co-operative Societies Act for the time being in force; or (iii) a scheduled bank as defined in the Reserve Bank of India Act, 1934 ; or (iv) a corresponding new bank constituted	or conducted without obtaining the previous sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in this behalf, and unless the chit is registered in that State in accordance with the provisions of this Act: Provided that a sanction obtained under this sub-section shall lapse if the chit is not registered within twelve months from the date of such sanction or within such further period or periods not exceeding six months in the aggregate as the State Government may, on application made to it in this behalf, allow.

under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970). <u>Section 4</u> - Prohibition of invitation for subscription except under certain conditions (1) Where previous sanction is required by section 3 for starting and conducting a chitty, no person shall issue or publish any notice, circular, prospectus, proposal or other document inviting the public to subscribe for tickets in any such chitty or containing the terms and conditions of any such chitty unless such notice, circular, prospectus, proposal or other document contains a statement that the previous sanction required by section 3 has been obtained, together with the particulars of such sanction. **(1a)*** Where a chitty is registered outside the State and twenty per cent more of the subscribers are persons	

normally residing in the State, the foreman of the chitty shall open a branch in the State and obtain sanction and registration under the provisions of this Act. **(*) As Amended by Finance Act, 2002** (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.	
Section 15 - Security to be given by foreman (1) Every foreman shall, before the first drawing of the chitty,— (a) execute a bond in favour of or in trust for the other subscribers for the proper conduct of the chitty, charging immovable property sufficient to the satisfaction of the Registrar for the realization of twice the chitty amount; or	Section 20 - Security to be given by foreman (1) For the proper conduct of the chit, every foreman shall, before applying for a previous sanction under section 4,- (a) deposit in the name of the Registrar, an amount equal to,- (i) fifty per cent, of the chit amount in cash in an approved

(b) deposit in an approved bank an amount equal to the chitty amount or invest in Government securities of the face value of note less than one and a half times the chitty amount and transfer the amount so deposited or the Government securities in favour of the Registrar to be held in trust by him as security for the due conduct of the chitty. (2) If any foreman makes default in complying with the requirements of sub-section (1), he shall be punishable with fine which may extend to five hundred rupees. (3) The security given by the foreman under sub-section (1) or any security substituted under sub-section (6) shall not be liable to be attached in execution of a decree or otherwise until the chitty is terminated and the claims of all are fully satisfied. (4) The Registrar shall, after the termination of a chitty and after satisfying himself that the claims of all the subscribers have been fully satisfied, order the release of the security furnished by the foreman under sub-section	bank; and (ii) fifty per cent, of the chit amount in the form of bank guarantee from an approved bank; or (b) transfer Government securities of the face value or market value (whichever is less) of not less than one and a half times the chit amount in favour of the Registrar; or (c) transfer in favour of the Registrar such other securities, being securities in which a trustee may invest money under section 20 of the Indian Trusts Act, 1882 (2 of 1882), of such value, as may be prescribed by the State Government from time of time: Provided that the value of the securities referred to in clause (c) shall not, in any case, be less than one and a half times the value of the chit amount.

(1) or the security substituted under sub-section (6), as the case may be, and in so doing he shall follow such procedure as may be, prescribed in that behalf. (5) The security furnished under sub-section (1) shall, subject to the provisions of sub-section (6), be kept intact during the currency of the chitty and the foreman shall not commit any such act with respect thereto as are calculated to impair materially the nature of the security or the value thereof. (6) The Registrar may:— (a) at any time during the currency of the chitty, permit the substitution of the security: Provided that such substituted security shall not be less than the security given by the foreman under sub-section (1); or (b) on the termination of the chitty, release a part of the security: Provided that the security left after release of the part is sufficient to satisfy the outstanding claims of	(2) Where a foreman conducts more than one chit, he shall furnish security in accordance with the provisions of sub-section (1) in respect of each chit. (3) The Registrar may, at any time during the currency of the chit, permit the substitution of the security: Provided that the face value or market value (whichever is less) of the substituted security shall not be less than the value of the security given by the foreman under sub-section (1). (4) The security given by the foreman under sub-section (1), or any security substituted under sub-section (3), shall not be liable to be attached in execution of a decree or otherwise until the chit is terminated and the claims of all the subscribers are fully satisfied. (5) Where the chit is terminated and the Registrar has satisfied himself that the claims of

all subscribers.	all the subscribers have been fully satisfied, he shall order the release of the security furnished by the foreman under sub-section (1), or the security substituted under sub-section (3), as the case may be, and in doing so, he shall follow such procedure as may be prescribed. (6) Notwithstanding anything to the contrary contained in any other law for the time being in force, the security furnished under this section shall not be dealt with by the foreman during the currency of the chit to which it relates and any dealing by the foreman with respect thereto by way of transfer or other encumbrances shall be null and void."

10. Apart from the conflicting provisions mentioned hereinabove, the impugned judgment has brought out various inconsistencies between the various provisions of the State Act and the Central Act in the following terms:

> "13. When we scan through the various provisions of both the legislations it is clear that there is repugnancy between some of the provisions of those legislations. The expression "discount" in Section 2(g) of the Chit Funds Act gives a different definition compared to Sub-section (4) of Section 2 of the Kerala Chitties Act, 1975. So also Section 4(1) of the Chit

Funds Act deals with registration of chits, commencement and conduct of chit business. Provisions of the Kerala Chitties Act, Section 3(1) are also contextually different. Section 6(3) of the Central Act states that the amount of discount referred to in Clause (f) of Sub-section (1) shall not exceed thirty per cent of the chit amount. As per Section 7(3) of the Chit Funds Act registration of a chit shall lapse if the declaration by the Foreman under Sub-section (1) of Section 9 is not filed within three months from the date of such endorsement or within such further period or periods not exceeding three months in the aggregate as the Registrar may, on an application made to him in that behalf. Section 8 of the Chit Funds Act deals with minimum capital requirement for the commencement etc. of a chit and creation of a reserve fund by a company and there is no corresponding provision in the Kerala Chitties Act.

14. Learned Single Judge has also found that once the requirement of furnishing security is satisfied under Section 20 of the Act, it would be arbitrary for the authorities in Kerala to insist for another security for the same chitty merely because 20% or more subscribers are residing in the State. Learned Single Judge further held that the Registrar in Kerala is absolutely free to call for details of registration and security furnished by the Foreman in any other State under Section 20 of the Central Act and after confirmation with the Registrar in that State he will record the same and shall not call for further security being furnished under Section 15 of the Kerala Act from the same Foreman for the same chitty. Learned Single Judge also found if a Foreman is registered under the Central Act in any State outside Kerala and has subscribers in Kerala, the Central Act applies to the Foreman even in regard to the business he has in Kerala, no matter the Central Act is not notified in the State and in such cases the learned Single Judge opined that the provisions of the State Act will yield to the extent the same is inconsistent with the Central Act. Learned Single Judge himself has therefore noticed inconsistencies between the various provisions

of the State Act and the Central Act.

> 15. On a comparison of the various provisions in the Chit Funds Act and the Kerala Chitties Act we have come across several such inconsistent and hostile provisions which are (sic) repugnant to each other. Suffice to say that if Sub-section (1a) (sic) of Section 4 is given effect to, a Foreman who has already got the registration under the Central Act and governed by the provisions of that Act would also be subjected to various provisions of the Kerala Act which are inconsistent and repugnant to the Central Act. If Section 4(1a) (sic) is therefore given effect to it would have extra territorial operation."

i) <u>Point Of Time For Determination Of Repugnance</u>

11. The key question that arises for determination is as to from when the repugnancy of the State Act will come into effect? Did repugnancy arise on the making of the Central 1982 Act or will it arise as and when the Central Act is brought into force in the State of Kerala?

12. Before dealing with the respective submissions made by counsel before us, we need to quote Articles 245(1), 246(1), (2) and (3), 249(1) and (3), 250(1) and (2), 251 and 254 of the Constitution, which read as follows:

"PART XI
RELATIONS BETWEEN THE UNION AND THE STATES
CHAPTER I.—LEGISLATIVE RELATIONS
Distribution of Legislative Powers

245. Extent of laws made by Parliament and by

the Legislatures of States - (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

246. Subject-matter of laws made by Parliament and by the Legislatures of States. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

249. Power of Parliament to legislate with respect to a matter in the State List in the national interest. - **(1)** Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) xxx xxx xxx

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation - (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.
(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

251. Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States. - Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as

the law made by Parliament continues to have effect, be inoperative.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States -

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by 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 the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. "

(emphasis supplied)

Submissions

13. Shri K.K. Venugopal, learned senior counsel appearing for the State of Kerala and Shri V. Shekhar, learned senior counsel for Union of India submitted that the word "made" in

Article 254 is relevant only to identify the law, i.e., the Parliamentary law or the State law and has nothing to do with the point of time for determination of repugnance. According to the learned counsel, a decision by a Court, on the question as to whether any State Act is repugnant to a Central Act, can be made only after both laws have been brought into force for the simple reason that the very object of determination of repugnance between two laws, by a Court, is to decide and declare as to which one of the two laws has to be obeyed or in the language of Article 254, which of the two laws "shall prevail". Therefore, according to the learned counsel, the very text of Article 254 makes it clear that a declaration of repugnance by a Court presupposes both laws actually being in operation. That, though the term employed in Article 254(2) is "a law *made* by the Legislature of a State", it actually refers to a stage when the law is still a Bill passed by the State legislature which under Article 200 is given to the Governor for his assent. According to the learned counsel, the phrase "law made" would also include a law which is brought in force. In this connection, it was submitted that if a petition is filed before a Court to declare a State law void, as being repugnant to Parliamentary law which has not been brought in force, the

court would reject the petition as premature as repugnancy cannot arise when the Parliamentary law has not even been brought in force. In this connection, learned counsel relied upon the judgment of this Court in **Tika Ramji v. State of U.P.** [1956 SCR 393] in which there is an observation to the effect that repugnance must exist in fact and not depend on a mere possibility. According to the learned counsel there is no merit in the contention advanced on behalf of private chit firms that upon mere enactment by the Parliament of a law relating to a subject in List III, all State enactments on that subject become immediately void, as repugnant. Further, learned counsel emphasized on the words "to the extent of the repugnancy" in Article 254(1). He submitted that the said words have to be given a meaning. Learned counsel submitted that the said words indicate that the entire State Act is not rendered void under Article 254(1) merely by enactment of a Central law. In this connection, it was submitted that the words "if any provision of a law" and the words "to the extent of repugnancy" used in Article 254(1) militate against an interpretation that the entire State Act is rendered void as repugnant merely upon enactment by Parliament of a law on the same subject. Lastly, learned counsel submitted that a

purposive interpretation of Article 254 must be adopted which does not lead to a legislative vacuum. In this connection learned counsel submitted that the State law came into force w.e.f. 25.08.1975 as per notification published in Kerala Gazette No. 480 whereas the Chit Funds Act, 1982 came into force w.e.f. 19.08.1982. Under Section 1(3) of that Act, the Central Government has been empowered to bring the said Act into force on such date as it may, by notification in the official gazette, appoint and different dates may be appointed for different States. Till date, the said 1982 Act has not been extended to the State of Kerala. According to the learned counsel, if one was to accept the contention advanced on behalf of the private chit firms that "when a Central law is *made* as envisaged in Article 254 of the Constitution then all repugnant State laws would immediately stand impliedly repealed, even without the Central Act being brought into force by a notification under Section 1(3) of the 1982 Act"; then, in that event, there would be a total legislative vacuum particularly when transactions have taken place in the State of Kerala on and from 19.08.1982 till date and even up to the date of notification which has not been issued under Section 1(3) till today. According to the learned counsel, keeping in

view the provisions of Sections 1(3), 4, 89 and 90 of the 1982 Act and absent framing of the Rules by the State Government in terms of Section 89, *making* of the central law cannot be the test for determining repugnancy.

14. On behalf of the private chitty firms, it was submitted by Shri T.R. Andhyarujina, Shri Shyam Divan, Shri Mathai M. Paikeday and Shri C.U. Singh, that the bringing into force or commencement of the Central Act was irrelevant in considering repugnancy under Article 254(1), and that the repugnancy arose when the State law came into conflict with the *enactment* of the Central law, even when the Central law is not brought into force in the State of Kerala. That, under Article 254(1), the repugnancy of the State law to the law *made* by the Parliament is to be considered with reference to the *law made*. The words "law made" have reference to the enactment of the law. In this connection, it was pointed out that the words "law made" have been used at seven places but there is no mention to the *commencement of a law* in Article 254. Thus, according to the learned counsel, repugnancy arose when the Central Chit Funds Act, 1982 received the assent of the President and on its publication in the Official Gazette and not on its commencement, which till date is not

there in the State of Kerala. In consequence, the Kerala Chitties Act, 1975 became void on 19.08.1982 when the Central Chit Funds Act, 1982 was made after receiving the assent of the President. On the question as to whether the Kerala Chitties Act, 1975 is repugnant to the Central Chit Funds Act, 1982 and whether Section 4(1a) inserted by Finance Act No. 7 of 2002 was void, the learned counsel submitted that the Central Act, 1982 intended to occupy the entire field of contracts in Entry 7 of the Concurrent List; that, both the legislations are made under Entry 7 of the Concurrent List and, therefore, in such a situation there would be repugnancy between the State legislation existing at the time of the enactment of the Central Act, 1982. Applying these tests, it was submitted that the Kerala Chitties Act, 1975 became void under Article 254(1) on the enactment of the Central Chit Funds Act, 1982. That, in consequence of the said repugnancy, the Kerala Chitties Act, 1975 became void under Article 254(1) on 19.08.1982 and the Kerala Chitties Act, 1975 stood *impliedly repealed*. However, according to the learned counsel, the previous operation of the Kerala Chitties Act, 1975 is not affected nor any right, privilege, obligation or liability acquired under the Kerala Chitties Act shall stand

affected in view of Article 367 of the Constitution. By reason of Article 367, the General Clauses Act, 1897 would apply to the said repeal. Thus, after 19.08.1982, the Kerala Chitties Act, 1975 stood repealed except for the limited purposes of Section 6 of the General Clauses Act, 1897. According to the learned counsel for the private chitties, to bring the Central Chit Funds Act, 1982 into operation in any State the Central Government has to issue a notification in the Official Gazette under Section 1(3). This has been done for several States but not for States like Kerala, Gujarat, etc. That, until such notification neither the Kerala Chitties Act, 1975 prevails in the State of Kerala as it has become void and stands repealed under Article 254(1) nor the Central Chit Funds Act, 1982 as it is not notified. Thus, according to the learned counsel, as and when the Central Government brings into force the Chit Funds Act, 1982 by a notification in the State of Kerala under Section 1(3), Section 90(2) of the 1982 Act will come into play and thereby the Kerala Chitties Act, 1975 shall continue to apply only to the chits in operation in Kerala on the date of commencement of the Central Act, 1982 in the same manner as the Kerala Chitties Act, 1975 applied to such chits before such commencement. However, as the Kerala Act, 1975 stood

repealed on 19.08.1982, on the enactment of the Central Chit Funds Act, 1982, there could be no Amendment of the Kerala Act, 1975 by Finance Act No. 7 of 2002. In the circumstances, it was submitted that Section 4(1a) inserted in Section 4 by the Kerala Finance Act No. 7 of 2002 was void and inoperative in law as the President's assent under Article 254(2) has not been obtained.

15. According to Shri V. Giri, learned counsel for one of the private chitty firms, the judgment of this Court in **Pt. Rishikesh** (supra) has been correctly decided. In this connection, it was submitted that the aspect of repugnancy primarily arises in the mind of the Legislature. That, in the case of **Deep Chand v. State of U.P.** (1959 Suppl. (2) SCR 8), three principles were laid down as indicative of repugnancy between a State law and a Central law, which have to be borne in mind by the State Legislature whenever it seeks to enact a law under any entry in the Concurrent List. Thus, where there is a Central law which intends to override a State law or where there is a Central law intending to occupy the field hitherto occupied by the State law or where the Central law collides with the State law in actual terms, then the State Legislature would have to take into account the possibility of repugnancy

within the meaning of Article 254 of the Constitution. In this connection, it was submitted that tests 1 and 2 enumerated in **Deep Chand (supra)** do not require the Central law to be actually brought into force for repugnancy between two competing legislations to arise, in the context of Article 254 of the Constitution. It was submitted that in the present case an intention to override the State law is clearly manifest in the Central Law, especially Section 3 of the Central Act which makes it clear that the provisions of the 1982 Act shall have effect notwithstanding anything contrary contained in any other law for the time being in force. Similarly, Section 90 of the Central Act providing for repeal of State Legislations also manifests an intention on the part of the Parliament to occupy the entire field hitherto occupied by the State Legislature. Further, each and every aspect relating to the conduct of a Chit as sought to be covered by the State Act has been touched upon by the Central Act. Thus, the Parliament in enacting the Central law has manifested its intention not only to override the existing State laws, but also to occupy the entire field relating to chits, which are special contracts, under Entry 7 of List III. Thus, the actual bringing into force of the Central Act is not a relevant circumstance insofar as the

legislative business of the State Legislature is concerned. That, when the State of Kerala intended to amend the State Act in 2002 by insertion of Section 4(1a), it was bound to keep in mind the fact that there is already a Central law governing chits since 19.08.1982, though not in force in Kerala, whereby there is a *pro tanto* repeal of the State Act. Therefore, the State Legislature ought to have followed the procedure in Article 254(2) by reserving the law for the consideration of the President and obtained Presidential assent. Therefore, according to the learned counsel, there is no merit in the contention of the State that there would be a legislative vacuum in the State of Kerala if the propositions advanced on behalf of the private chit firms are to be accepted. According to the learned counsel, Section 85(a) and Section 90(2) of the Central Chit Funds Act, 1982 inter alia provide for continuance of the application of the provisions of the Kerala Chitties Act, 1975 till the commencement of the Central Act by issuance of notification under Section 1(3) of the Central Chit Funds Act, 1982. On commencement of that Act there is a *pro tanto* repeal of the State Act by Section 90 of the Central Act. However, according to the learned counsel, repugnancy arose between two competing legislations, the moment the

Legislature took up the Kerala Chitties Act, 1975 for amendment by Finance Act No. 7 of 2002. Such repugnancy had to arise in the mind of the legislature and the State Legislature was bound to take note of the 1982 Central Act. In this view of the matter, there is no legislative vacuum at any point of time as urged on behalf of the State of Kerala. To hold otherwise would mean bypassing the legislative will of the Parliament expressed by passing the 1982 Act.

Our Answer to Question No. (i):- Point of time for determination of repugnance:

16. Article 254 deals with inconsistency between laws made by Parliament and laws made by the Legislatures of States. It finds place in Part XI of the Constitution. Part XI deals with relations between the Union and the States. Part XI consists of two Chapters. Chapter I deals with *Distribution of Legislative Powers.* Articles 245 to 255 find place in Chapter I of Part XI. Article 245 deals with extent of laws made by Parliament and by the Legislatures of States. The verb *"made"*, in past tense, finds place in the Head Note to Article 245. The verb *"make"*, in the present tense, exists in Article 245(1) whereas the verb *"made"*, in the past tense, finds place in Article 245 (2). While the legislative power is derived from Article 245, the entries in

the Seventh Schedule of the Constitution only demarcate the legislative fields of the respective Legislatures and do not confer legislative power as such. While the Parliament has power to make laws for the whole or any part of the territory of India, the Legislature of a State can make laws only for the State or part thereof. Thus, Article 245, *inter alia,* indicates the extent of laws made by Parliament and by the State Legislatures. Article 246 deals with subject-matter of laws made by Parliament and by the Legislatures of States. The verb *"made"* once again finds place in the Head Note to Article 246. This Article deals with *distribution of legislative powers* as between the Union and the State Legislatures, with reference to the different Lists in the Seventh Schedule. In short, the Parliament has full and exclusive powers to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III, whereas the State Legislatures, on the other hand, have exclusive power to legislate with respect to matters in List II, minus matters falling in List I and List III and have concurrent power with respect to matters in List III. [**See: A.L.S.P.P.L. Subrahmanyan Chettiar v. Muttuswami Goundan – AIR 1941 F.C. 47**]. Article 246, thus, provides for distribution, as

between Union and the States, of the legislative powers which are conferred by Article 245. Article 245 begins with the expression "subject to the provisions of this Constitution". Therefore, Article 246 must be read as "subject to other provisions of the Constitution". For the purposes of this decision, the point which needs to be emphasized is that Article 245 deals with conferment of legislative powers whereas Article 246 provides for distribution of the legislative powers. Article 245 deals with extent of laws whereas Article 246 deals with distribution of legislative powers. In these Articles, the Constitution framers have used the word "make" and not "commencement" which has a specific legal connotation. [**See:** Section 2(13) of the General Clauses Act, 1897]. One more aspect needs to be highlighted. Article 246(1) begins with a non-obstante clause "Notwithstanding anything in clauses (2) and (3)". These words indicate the principle of federal supremacy, namely, in case of inevitable conflict between the Union and State powers, the Union powers, as enumerated in List I, shall prevail over the State powers, as enumerated in Lists II and III, and in case of overlapping between Lists III and II, the former shall prevail. [**See: Indu Bhusan Bose versus Rama Sundari Devi & Anr. –**

(1970) 1 SCR 443 at 454]. However, the principle of federal supremacy in Article 246(1) cannot be resorted to unless there is an "irreconcilable" conflict between the entries in Union and State Lists. The said conflict has to be a "real" conflict. The non-obstante clause in Article 246(1) operates only if reconciliation is impossible. As stated, Parliamentary Legislation has supremacy as provided in Article 246 (1) and (2). This is of relevance when the field of legislation is in the Concurrent List. The Union and the State Legislatures have concurrent power with respect to the subjects enumerated in List III. [**See**: Article 246(2)]. Hence, the State Legislature has full power to legislate regarding subjects in the Concurrent List, subject to Article 254(2), i.e., provided the provisions of the State Act do not come in conflict with those of the Central Act on the subject. [**See: Amalgamated Electricity Co. (Belgaum) Ltd. versus Municipal Committee, Ajmer – (1969) 1 SCR 430**]. Thus, the expression "*subject to*" in clauses (2) and (3) of Article 246 denotes supremacy of Parliament. Further, in Article 246(1) the expression used is *"with respect to"*. There is a distinction between a law *"with respect to"*, and a law *"affecting"*, a subject matter. The opening words of Article 245 "Subject to the provisions of this

Constitution" make the legislative power conferred by Article 245 and Article 246, as well as the legislative Lists, "subject to the provisions of the Constitution". Consequently, laws made by a Legislature may be void not only for lack of legislative powers in respect of the subject-matter, but also for transgressing constitutional limitations. [**See:** *Para 22.6 of Vol.3 at Page 2305 of the Constitutional Law of India by H.M. Seervai, Fourth Edition*]. This aspect is important as the word "void" finds place in Article 254(1) of the Constitution. Therefore, the Union and State Legislature have concurrent power with respect to subjects enumerated in List III. Hence, the State Legislature has full power to legislate regarding the subjects in List III, subject to the provision in Article 254(2), i.e., provided the provisions of the State Act do not conflict with those of the Central Act on the subject. Where the Parliament has made no law occupying the field in List III, the State Legislature is competent to legislate in that field. As stated, the expression "*subject to*" in clauses (2) and (3) of Article 246 denotes the supremacy of the Parliament. Thus, the Parliament and the State Legislature derive the power to legislate on a subject in List I and List II from Article 246 (1) and (3) respectively. Both derive their power from Article

246(2) to legislate upon a matter in List III subject to Article 254 of the Constitution. The respective Lists merely demarcate the legislative fields or legislative heads. Further, Article 250 and Article 251 also use the word "make" and not "commencement". If one reads the Head Note to Article 250 it refers to power of the Parliament **to legislate** *with respect to* any matter in the State List if a Proclamation of Emergency is in operation. The word "made" also finds place in Article 250(2). In other words, the verb "make" or the verb "made" is equivalent to the expression "to legislate". Thus, making of the law is to legislate with respect to any matter in the State List if Proclamation of Emergency is in operation. The importance of this discussion is to show that the Constitution framers have deliberately used the word "made" or "make" in the above Articles. Our Constitution gives supremacy to the Parliament in the matter of *making* of the laws or legislating with respect to matters delineated in the three Lists. The principle of supremacy of the Parliament, the distribution of legislative powers, the principle of exhaustive enumeration of matters in the three Lists are all to be seen in the context of *making* of laws and not in the context of *commencement* of the laws.

17. Under clause (1) of Article 254, a general rule is laid down to say that the Union law shall prevail where the State law is repugnant to it. The question of repugnancy arises only with respect to the subjects enumerated in the Concurrent List as both the Parliament and the State Legislatures have concurrent powers to legislate over the subject-matter in that List. In such cases, at times, conflict arises. Clause (1) of Article 254 states that if a State law, relating to a *concurrent subject,* is "repugnant" to a Union law, relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. Thus, Article 254(1) also gives supremacy to the law *made* by Parliament, which Parliament is competent to enact. In case of repugnancy, the State Legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application of Article 254(1) and both the Acts would prevail. Thus, Article 254 is attracted only when Legislations covering the same matter in List III made by the Centre and by the State operate on that subject; both of them (Parliament and the State Legislatures) being competent to enact laws with respect to the subject in List III. In the

present case, Entry 7 of List III in the Seventh Schedule deals with the subject of "C*ontracts*". It also covers special contracts. Chitties are special contracts. Thus, the Parliament and the State Legislatures are competent to enact a law with respect to such contracts. The question of repugnancy between the Parliamentary Legislation and State Legislation arises in two ways. First, where the Legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two Legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary Legislation will predominate, in the first, by virtue of *non-obstante* clause in Article 246(1); in the second, by reason of Article 254(1). Article 254(2) deals with a situation where the State Legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State Legislation. In clause (1) of Article 254 the significant words used are "provision of a law made by the Legislature of a State", "any provision of a law made by Parliament which Parliament is competent to enact", "the law made by Parliament, whether passed before or after

the law made by the Legislature of such State", and "the law made by the Legislature of the State shall, to the extent of repugnancy, be void". Again, clause (2) of Article 254 speaks of "a law made by the Legislature of a State", "an earlier law made by Parliament", and "the law so made by the Legislature of such State". Thus, it is noticeable that throughout Article 254 the emphasis is on *law-making* by the respective Legislatures. Broadly speaking, law-making is exclusively the function of the Legislatures (see Articles 79 and 168). The President and the Governor are a part of the Union or the Legislatures of the States. As far as the Parliament is concerned, the legislative process is complete as soon as the procedure prescribed by Article 107 of the Constitution and connected provisions are followed and the Bill passed by both the Houses of Parliament has received the assent of the President under Article 111. Similarly, a State legislation becomes an Act as soon as a Bill has been passed by the State Legislature and it has received the assent of the Governor in accordance with Article 200. It is only in the situation contemplated by Article 254(2) that a State Legislation is required to be reserved for consideration and assent by the President. Thus, irrespective of the date of enforcement of a

Parliamentary or State enactment, a Bill becomes an Act and comes on the Statute Book immediately on receiving the assent of the President or the Governor, as the case may be, which assent has got to be published in the official gazette. The Legislature, in exercise of its legislative power, may either enforce an Act, which has been passed and which has received the assent of the President or the Governor, as the case may be, from a specified date or leave it to some designated authority to fix a date for its enforcement. Such legislations are conditional legislations as in such cases no part of the legislative function is left unexercised. In such legislations, merely because the Legislature has postponed the enforcement of the Act, it does not mean that the law has not been made. In the present case, the Central Chit Funds Act, 1982 is a law-made. The Chit Funds Bill was passed by both Houses of Parliament and received the assent of the President on 19.08.1982. It came on the Statute Book as the Chit Funds Act, 1982 (40 of 1982). Section 1(2) of the said Act states that the Act extends to the whole of India, except the State of Jammu and Kashmir whereas Section 1(3) states that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different

dates may be appointed for different States. The point to be noted is that the *law-making* process ended on 19.08.1982. Section 1(3) is a piece of conditional legislation. As stated, in legislations of such character, merely because the legislation has postponed the enforcement of the Act, it does not mean that the law has not been made. In the present case, after enactment of the Chit Funds Act, 1982 on 19.08.1982, the said Act has been applied to 17 States by notifications issued from time to time under Section 1(3). How could Section 1(3) operate and make the said Act applicable to 17 States between 2.04.1984 and 15.09.2008 and/ or postpone the commencement of the Act for certain other States including State of Kerala, Gujarat, Haryana, etc. unless that Section itself is in force? To put the matter in another way, if the entire Act including Section 1(3) was not in operation on 19.08.1982, how could the Central Government issue any notification under that very Section in respect of 17 States? There must be a law authorizing the Government to bring the Act into force. Thus, Section 1(3) came into force immediately on passing of the Act (see **A. Thangal Kunju Musaliar v. M. Venkatachalam Potti** AIR 1956 SC 246). Thus, the material dates, in our opinion, are the dates when the two enactments

received the assent of the President which in the case of Central Act is 19.08.1982 while in the case of the Kerala Chitties Act, 1975, it is 18.07.1975. There is one more way in which this problem can be approached. Both the courts below have proceeded on the basis that there are conflicting provisions in the Central Act, 1982 vis-à-vis the State Act, 1975 (see paragraphs 13, 14 & 15 of the impugned judgment). In our view, the intention of the Parliament was clearly to occupy the entire field falling in Entry 7 of List III. The 1982 Act was enacted as a Central Legislation to "*ensure uniformity in the provisions applicable to chit fund institutions throughout the country as such a Central Legislation would prevent such institutions from taking advantage either of the absence of any law governing chit funds in a State or exploit the benefit of any lacuna or relaxation in any State law by extending their activities in such States*". The background of the enactment of the Central Chit Funds Act, which refers to the Report of the Banking Commission has been exhaustively dealt with in the case of **Shriram Chits and Investment (P) Ltd. v. Union of India** [(1993) Supp 4 SCC 226] as also in the Statement of Objects and Reasons of the 1982 Act. The clear intention of enacting the Central 1982 Act, therefore, was to make the

Central Act a complete code with regard to the business of conducting chit funds and to occupy the legislative field relating to such chit funds. Moreover, the intention to override the State laws is clearly manifested in the Central Act, especially Section 3 which makes it clear that the provisions of the Central Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. Similarly, Section 90 of the Central Act providing for the repeal of State legislations also manifests the intention on the part of the Parliament to occupy the field hitherto occupied by State Legislation. Each and every aspect relating to the conduct of the chits as is covered by the State Act has been touched upon by the Central Act in a more comprehensive manner. Thus, on 19.08.1982, the Parliament in enacting the Central law has manifested its intention not only to override the existing State Laws, but to occupy the entire field relating to Chits, which is a special contract, coming under Entry 7 of List III. Consequently, the State Legislature was divested of its legislative power/ authority to enact Section 4(1a) vide Finance Act No. 7 of 2002 on 29.07.2002, save and except under Article 254(2) of the Constitution. Thus, Section 4(1a) became void for want of assent of the President under Article 254(2).

Let us assume for the sake of argument that the State of Kerala were to obtain the assent of the President under Article 254(2) of the Constitution in respect of the insertion of Section 4(1a) by Finance Act No. 7 of 2002. Now, Article 254(2) deals with the situation where State Legislation is reserved and having obtained the President's assent, prevails in the State over the Central Law. However, in view of the proviso to Article 254(2), the Parliament could have brought a legislation even to override such assented to State Finance Act No. 7 of 2002 without waiting for the Finance Act No. 7 of 2002 to be brought into force as the said proviso states that nothing in Article 254(2) shall prevent Parliament from *enacting* at any time, any law *with respect to* the same matter including a law adding to, amending, varying or repealing the law so made by the State Legislature) [emphasis supplied]. Thus, Parliament in the matter of enacting such an overriding law need not wait for the earlier State Finance Act No. 7 of 2002 to be brought into force. In other words, Parliament has the power under the said proviso to override the Finance Act No. 7 of 2002 even before it is brought into force. Therefore, we see no justification for construing Article 254(2) read with the proviso in a manner which inhibits the Parliament from repealing,

amending, or varying a State Legislation which has received the President's assent under Article 254(2), till that State Legislation is brought into force. We have to read the word "made" in the proviso to Article 254(2) in a consistent manner. The entire above discussion on Articles 245, 246, 250, 251 is only to indicate that the word "made" has to be read in the context of law-making process and, if so read, it is clear that to test repugnancy one has to go by the making of law and not by its commencement.

Case Law

18(i) In ***T. Barai v. Henry Ah Hoe*** reported in (1983) 1 SCC 177, this Court has laid down the following principles on repugnancy.

> **"15.** There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception viz. that if the

President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. *The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the "same matter". Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1).*"

(ii) In ***I.T.C. Limited*** *v.* ***State of Karnataka*** reported in 1985 Supp. SCC 476, this Court vide para 18 stated as under.

"18. Thus, in my opinion, the five principles have to be read and construed together and not in

isolation — where however, the Central and the State legislation cover the same field then the Central legislation would prevail. It is also well settled that where two Acts, one passed by the Parliament and the other by a State Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail."

(iii) In the case of ***M. Karunanidhi*** *v.* ***Union of India*** (1979) 3 SCC 431, the test for determining repugnancy has been laid down by the Supreme Court as under.

> **"8.** It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e. the State List are concerned, the State Legislatures

alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President

would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

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24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

25. In *Colin Howard's Australian Federal Constitutional Law,* 2nd Edn. the author while

describing the nature of inconsistency between the two enactments observed as follows:

> "An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts."

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35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

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.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

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."

Applying the above tests to the facts of the present case, on the enactment of the Central Chit Funds Act 1982 on 19.08.1982, intending to occupy the entire field of Chits under

Entry 7 of List III, the State Legislature was denuded of its power to enact the Finance Act No. 7 of 2002. However, as held in numerous decisions of this Court, a law enacted by the State legislature on a topic in the Concurrent List which is inconsistent with and repugnant to the law made by the Parliament can be protected by obtaining the assent of the President under Article 254(2) and that the said assent would enable the State law to prevail in the State and override the provisions of the Central Act in its applicability to that State only. Thus, when the State of Kerala intended to amend the State Act in 2002, it was bound to keep in mind the fact that there is already a Central law on the same subject, made by Parliament in 1982, though not in force in Kerala, whereunder there is a *pro tanto* repeal of the State Act. Therefore, the State legislature ought to have followed the procedure in Article 254(2) and ought to have obtained the assent of the President.

(iv) In ***Tika Ramji (supra)***, the facts were as follows:- The State Legislature enacted the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 which empowered the State Government to issue notifications, which were in fact issued on 27.09.1954 and 9.11.1955 regulating supply and purchase

of sugarcane. It was inter alia contended that the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, being the State Act was repugnant to Act LXV of 1951 enacted by the Parliament which empowered the Central Government vide Section 18G to issue an order regulating distribution of finished articles at fair prices relatable to the scheduled industry. The question that arose for determination was whether "sugar" was an item covered by the Central Act No. LXV of 1951 and, if so, whether the State Act was void being repugnant to the Central Law. This Court held that the whole object of the Central Act (LXV of 1951) was to regulate distribution of manufactured/finished articles at fair prices and not to legislate in regard to the raw material (sugarcane). This Court further held that Section 18G of the Central Act No. LXV of 1951 did not cover *"sugarcane"*; Section 18G of the Central Act No. LXV of 1951 only dealt with the finished products manufactured by scheduled industries, and, hence, there was no repugnancy. In the said judgment, this Court also referred to three tests of inconsistency or repugnancy enumerated by Nicholas in his commentary on Australian Constitution, 2nd Edition, Page 303. In the said judgment, this Court also relied upon the ratio of the judgment in the

case of ***Clyde Engineering Co. Ltd. v. Cowburn*** [1926] 37 C.L.R. 466, in which Isaacs, J. laid down one test of inconsistency as conclusive: "If, 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." Applying these tests, this Court held that there was no repugnancy as *"sugarcane"* was dealt with by the impugned State Act whereas the Central Act dealt with supply and distribution of manufactured articles at fair prices and, therefore, there was no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the State. The only question that arose was whether Parliament and the State Legislature sought to exercise their powers over the same subject matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or whether such Acts evinced an intention to cover the whole field. This Court held that as "sugarcane" was not the subject-matter of the Central Act, there was no intention to cover the whole field and, consequently, both the Acts could co-exist without repugnancy. Having come to the conclusion that there was no repugnancy, the Court observed that, "**Even**

assuming that sugarcane was an article relatable to the sugar industry as a final product within the meaning of Section 18G of Central Act No. LXV of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that Section and no question of repugnancy could arise because repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under Section 18G being issued by the Central Government would not be enough. The existence of such an order was an essential **pre-requisite** before repugnancy could arise." This sentence has been relied upon by learned counsel for the State of Kerala in the present case in support of his submission that repugnancy must exist in fact and not depend on a mere possibility. According to the learned counsel, in the present case, applying the ratio of the judgment in the case of ***Tika Ramji* (supra)**, it is clear that the repugnancy has not arisen in the present case before us for the simple reason that the Central Chit Funds Act, 1982 has not come into force in the State of Kerala. That, a mere possibility of the Central Act coming into force in future in the State of Kerala would not give rise to repugnancy.

(v) In the case of ***State of Orissa v. M.A. Tulloch and Co.***

reported in (1964) 4 SCR 461, the facts were as follows:- On a lease being granted by State of Orissa under Mines and Minerals (Development and Regulation) Act 1948 (Central Act), Tulloch and Company started working a manganese mine. The State of Orissa passed Orissa Mining Areas Development Fund Act, 1952 under which the State Government was authorized to levy a fee for development of "mining areas" in the State. After bringing these provisions into operation, State of Orissa demanded from Tulloch and Company on August 1, 1960 fees for the period July, 1957 to March, 1958. Tulloch and Company challenged the legality of the demand before the High Court under Article 226 of the Constitution. The writ petition was allowed on the ground that on the coming into force of the Mines and Minerals (Regulation and Development) Act of 1957, hereinafter called the "Central Act of 1957", which was brought into force from 1st June, 1953 the Orissa Mining Areas Development Fund Act 1952 should be deemed to be non-existent. This was the controversy which came before this Court. One of the points which arose for determination was that of repugnancy. It was urged that the object and purpose of Orissa Mining Areas Development Fund Act, 1952 was distinct and different from the object and

purpose of the Central Act of 1957, with the result that both the enactments could validly co-exist since they did not cover the same field. This argument was rejected by this Court. It was held that having regard to the terms of Section 18(1) the intention of Parliament was to cover the entire field. That, by reason of declaration by Parliament under the said Section the entire subject matter of conservation and development of minerals was taken over for being dealt with by Parliament thus depriving the State of the power hitherto possessed. Relying on the judgment of the Constitution Bench of this Court in the case of ***Hingir-Rampur Coal Co. v. State of Orissa*** (1961) 2 SCR 537, it was held in ***Tulloch's*** case that for the declaration to be effective it is not necessary that the rules should be made or enforced; all that was required was a declaration by Parliament to the effect that in public interest regulation and development of the mines should come under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Applying the said test, in ***Tulloch's*** case, the Constitution Bench held that the Central Act of 1957 intended to cover the entire field dealing with regulation and development of mines being under the control of the Central Government. In

Tulloch's case, reliance was placed on the above underlined portion in ***Tika Ramji's*** case (supra) which, as stated above, was on the assumption that sugarcane was an article relatable to sugar industry within Section 18G of the Central Act No. LXV of 1951. It was urged on behalf of the State of Orissa in ***Tulloch's*** case that Section 18(1) of the Central Act of 1957 merely imposes a duty on the Central Government to take steps for ensuring conservation and development of mineral resources. That, since the Central Government had not framed Rules under the Act for development of mining areas till such Rules were framed, the Central Act of 1957 did not cover the entire field, and, thus, the Orissa Mining Areas Development Fund Act, 1952 continued to operate in full force till the Central Government enacted Rules under Section 18 of the 1957 Act. The said contention of the State of Orissa was rejected by the Constitution Bench of this Court in **Tulloch**'s case by placing reliance on the judgment of this Court in ***Hingir-Rampur's*** case (supra) in following words:

> "We consider that this submission in relation to the Act before us is without force besides being based on a misapprehension of the true legal position. In the first place the point is concluded by the earlier decision of this court in *Hingir Rampur Coal Co. Ltd.* v. *State of Orissa* where this

court said:

> "In order that the declaration should be effective it is not necessary that rules should be made or enforced. All that this required is a declaration by Parliament that it was expedient in the public interest to take the regulation of development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not."

But even if the matter was res integra, the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act."

19. To sum up, Articles 246(1), (2) and 254(1) provide that to

the extent to which a State law is in conflict with or repugnant to the Central law, which Parliament is competent to make, the Central law shall prevail and the State law shall be void to the extent of its repugnancy. This general rule of repugnancy is subject to Article 254(2) which inter alia provides that if a law made by a State legislature in respect of matters in the Concurrent List is reserved for consideration by the President and receives his/ her assent, then the State law shall prevail in that State over an existing law or a law made by the Parliament, notwithstanding its repugnancy. The proviso to Article 254(2) provides that a law made by the State with the President's assent shall not prevent Parliament from making at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by a State legislature. Thus, Parliament need not wait for the law made by the State with the President's assent to be brought into force as it can repeal, amend, vary or add to the assented State law no sooner it is made or enacted. We see no justification for inhibiting Parliament from repealing, amending or varying any State Legislation, which has received the President's assent, overriding within the State's territory, an earlier Parliamentary enactment in the concurrent sphere,

before it is brought into force. Parliament can repeal, amend, or vary such State law no sooner it is assented to by the President and that it need not wait till such assented to State law is brought into force. This view finds support in the judgment of this Court in **Tulloch** (supra). Lastly, the definition of the expressions "*laws in force*" in Article 13(3)(b) and Article 372(3), Explanation I and "existing law" in Article 366(10) show that the laws in force include laws passed or made by a legislature before the commencement of the Constitution and not repealed, notwithstanding that any such law may not be in operation at all. Thus, the definition of the expression "laws in force" in Article 13(3)(b) and Article 372(3), Explanation I and the definition of the expression "existing law" in Article 366(10) demolish the argument of the State of Kerala that a law has not been made for the purposes of Article 254, unless it is enforced. The expression "existing law" finds place in Article 254. In **Edward Mills Co. Ltd., Beawar v. State of Ajmer** [AIR 1955 SC 25], this Court has held that there is no difference between an "existing law" and a "law in force". Applying the tests enumerated hereinabove, we hold that the Kerala Chitties Act, 1975 became void on the making of the Chit Funds Act, 1982 on 19.08.1982, [when it

received the assent of the President and got published in the Official Gazette] as the Central 1982 Act intended to cover the entire field with regard to the conduct of the Chits and further that the State Finance Act No. 7 of 2002, introducing Section 4(1a) into the State 1975 Act, was void as the State legislature was denuded of its authority to enact the said Finance Act No. 7 of 2002, except under Article 254(2), after the Central Chit Funds Act, 1982 occupied the entire field as envisaged in Article 254(1) of the Constitution. Thus, repugnancy arises on the making and not commencement of the Central Chit Funds Act, 1982. On 19.08.1982, the Kerala Chitties Act, 1975 ceased to operate except to the extent of Section 6 of the General Clauses Act, 1897.

ii) Our Answer to Question No. (ii) :- The Effect in Law of a Repeal

20. In **State of Orissa v. M.A. Tulloch & Co.** (supra), this Court came to the conclusion that by reason of the declaration by Parliament the entire subject matter of "conservation and development of minerals" stood taken over, for being dealt with by Parliament, thus, denying the State of the power within it hitherto possessed and consequently the Central Act superseded the State law, thus effecting a repeal. After coming

to the conclusion that the State law stood repealed, this Court was required to consider a submission advanced on behalf of **Tulloch & Co.** It was submitted that Section 6 of the General Clauses Act, 1897 applied only to express repeals and not to repeals consequent upon the supersession of the State Act by a law having the constitutional superior efficacy. It was submitted that a mere disappearance or supersession of the State Act under Article 254(1) was at the highest a case of implied repeal and not an express repeal. That, Section 6 of the General Clauses Act applied only to express repeals and not to implied repeals. This contention was rejected in the following terms :

> "The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision

> which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted."

21. In **A. Thangal Kunju Mussaliar v. M. Venkitachalam Potti and Anr.** [1955] 2 SCR 1196, the Travancore State Legislature enacted Act No. XIV of 1124 on 7.03.1949 to provide for investigation of tax evasion cases. The Act was to come into force by Section 1(3) on the date appointed by the State Government. The States of Travancore and Cochin merged on 1.07.1949. By Ordinance 1 of 1124, all existing laws were to continue in force in the United State of Travancore and Cochin. After action was taken under Act No. XIV of 1124, a controversy was raised that as the said Act No.

XIV of 1124 was not a law in force when the United State of Travancore and Cochin was formed, all proceedings under the Travancore Act No. XIV of 1124 had lapsed. This contention was dismissed by this Court in following terms:

> "The general rule of English law, as to the date of the commencement of a statute, since 1797, has been and is that when no other date is fixed by it for its coming into operation it is in force from the date when it receives the royal assent (33 Geo. 3, c. 13). The same rule has been adopted in Section 5 of our General Clauses Act, 1897. We have not been referred to any Travancore law which provides otherwise. If, therefore, the same principle prevailed in that State, Travancore Act 14 of 1124 would have come into force on 7-3-1949 when it was passed by the Travancore Legislature. What prevented that result? The answer obviously points to Section 1(3) which authorises the Government to bring the Act into force on a later date by issuing a notification. How could Section 1(3) operate to postpone the commencement of the Act unless that section itself was in force? One must, therefore, concede that Section 1(3) came into operation immediately the Act was passed, for otherwise it could not postpone the coming into operation of the Act. To put the same argument in another way, if the entire Act including Section 1(3) was not in operation at the date of its passing, how could the Government issue any notification under that very section? There must be some law authorising the Government to bring the Act into force. Where is that law to be found unless it were in Section 1(3)? In answer, Shri Nambiyar referred us to the principle embodied in Section 37 of the English Interpretation Act which corresponds to Section 22 of our General Clauses Act. That section does not help the petitioner at all. All that it does is to authorise the making of rules or bye-laws and the issuing of orders between the passing

> and the commencement of the enactment but the last sentence of the section clearly says that "rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation". Suppose Shri Nambiyar is right in saying that the Government could issue a notification under Section 1(3) by virtue of the principle embodied in Section 22 of the General Clauses Act, it will not take his argument an inch forward, for that notification, by reason of the last sentence of Section 22 quoted above, will not take effect till the commencement of the Act. It will bring about a stalemate. It is, therefore, clear that a notification bringing an Act into force is not contemplated by Section 22 of the General Clauses Act. Seeing, therefore, that it is Section 1(3) which operates to prevent the commencement of the Act until a notification is issued thereunder by the Government and that it is Section 1(3) which operates to authorise the Government to issue a notification thereunder, it must be conceded that that Section 1(3) came into force immediately on the passing of the Act. There is, therefore, no getting away from the fact that the Act was an "existing law" from the date of its passing right up to 1-7-1949 and was, consequently, continued by Ordinance 1 of 1124. This being the position, the validity of the notification issued on 26-7-1949 under Section 1(3), the reference of the case of the petitioner, the appointment of Respondent 1 as the authorised official and all proceedings under the Travancore Act 14 of 1124 cannot be questioned on the ground that the Act lapsed and was not continued by Ordinance 1 of 1124."

22. In **T.S. Baliah v. T.S. Rengachari** [1969] 3 SCR 65, the underlying principle of Section 6 of the General Clauses Act, 1897 is explained as under :-

> "The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it

> manifests an intention to destroy them. Section 6 of the General Clauses Act therefore will be applicable whenever there is a repeal of an enactment. In such cases consequences laid down in Section 6 will follow, unless, as the Section itself says, a different intention appears in the repealing statute."

23. In **State of Punjab vs. Mohar Singh** [1955] 1 SCR 893 prosecution was commenced against Mohar Singh under Section 7 of the East Punjab Refugees (Registration of Land Claims) Act, 1948. The offence was committed at a time when the said Act was not in force. The offence was committed when East Punjab Refugees (Registration of Land Claims) Ordinance of 1948 was in force. That Ordinance was for a temporary period. It was substituted by the Act. It is important to note that the Ordinance was a temporary law and the same was repealed before it expired by efflux of time. In the above circumstances, Section 6 of General Clauses Act, 1897 came for interpretation before this Court. It was held :

> "We cannot subscribe to the broad proposition that Section 6 is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases unless the new legislation manifests a contrary intention or incompatibility. Such incompatibility has to be ascertained from a consideration of all relevant provisions of the new law and mere absence of a saving clause by itself is not material."

24. Applying the tests laid down in the above judgments of this Court, when a State law is repealed expressly or by implication by a Union law, Section 6 of the General Clauses Act 1897 applies as to things done under the State law which are so repealed, so that transactions under the State law before the repeal are saved as also any rights and liabilities arising under the State Act, prior to the enactment of the Central Act. Repeal of an enactment is a matter of substance. It depends on the intention of the Legislature. If by reason of the subsequent enactment, the Legislature intended to abrogate or wipe off the former enactment, wholly or in part, then, it would be a case of *pro tanto* repeal.

25. In the present case, repugnancy is established by both the tests. As can be seen from the impugned judgment (vide paras 13-15) on comparison of the provisions of the Kerala Chitties Act, 1975, being the State Act, and the Chit Funds Act, 1982, being the Central Act, inconsistencies actually exist directly. Further, as stated above, the intention of the Parliament in enacting the Central Act is to cover the entire field relating to or with respect to Chits. Hence, on both counts the two Acts cannot stand together. In consequence of this repugnancy the Kerala Chitties Act, 1975 became void

under Article 254(1) on the enactment of the Central Chit Funds Act, 1982 on 19.08.1982 and the Kerala Chitties Act, 1975 thus stood impliedly repealed. By reason of Article 367 of the Constitution, the General Clauses Act, however, applies to the said repeal. Under Sections 6(b) and (c) of the General Clauses Act the previous operation of the Kerala Chitties Act, 1975 is not affected nor any right, privilege, obligation or liability acquired or incurred under the said Kerala repealed Act. This is the Constitutional position which would prevail if Section 90(1) of the Central Chit Funds Act, 1982 would not have been there. In other words, Section 90(1) of the Central Chit Funds Act, 1982 is stated out of abundant caution. Thus, after 19.08.1982 the Kerala Chitties Act, 1975 stood repealed except for the limited purposes of Section 6 of the General Clauses Act. Likewise, the other existing six State laws on Chits, referred to in Section 90 of the Chit Funds Act, 1982, existing on 19.08.1982 also stood repealed subject to the saving under Section 6 of the General Clauses Act.

26. To bring the Central Chit Funds Act, 1982 into operation in any State the Central Government has to issue a notification in the Official Gazette under Section 1(3). This has been done for some States but it has not been done for others

like Kerala. It is for the Central Government to issue a notification bringing into force the Chit Funds Act, 1982 in Kerala when it deems appropriate as it has done in some States. Until such notification is issued neither the Kerala Chitties Act, 1975 prevails in the State of Kerala as it has become void and has been repealed under Article 254(1), nor the Central Chit Funds Act, 1982 as it is not notified till date. If and when the Central Government brings into force the Chit Funds Act, 1982 by a notification in the State of Kerala, under Section 1(3), Section 90(2) will come into play and thereby the Kerala Chitties Act, 1975 shall continue to apply only to chits in operation in State of Kerala on the date of the commencement of the Central Chit Funds Act, 1982 in the same manner as the Kerala Chitties Act, 1975 applied to such chits before such commencement. Moreover, Sections 85(a) and 90(2) of the Central Chit Funds Act, 1982 provide for continuance of the application of the provisions of the Kerala Chitties Act, 1975 till the commencement of the Central Chit Funds Act, 1982. Such commencement is dependent upon notification under Section 1(3). Thus, on such commencement of the Central Chit Funds Act, 1982, the transactions (chits) between 19.08.1982 and the date of

commencement of the Central Act will stand protected under Section 90(2). Hence, there would be no legislative vacuum.

27. Before concluding, one aspect needs to be highlighted. Section 4(1a) was inserted into Section 4(1) vide State Finance Act No. 7 of 2002. Under Section 4(1a), in cases where a chitty is registered outside the State, say in Jammu & Kashmir, but having 20% or more of the subscribers normally residing in State of Kerala, the Foreman (who has got registration outside the State of Kerala) has to open a branch in the State of Kerala and obtain registration under the Kerala Chitties Act, 1975. This sub-section was inserted to plug a loophole. In many cases, chitties were registered outside the State of Kerala even when large number of subscribers were residing in State of Kerala. It is true that on the making of the Central Chit Funds Act, 1982, the State legislature could not have enacted the Finance Act No. 7 of 2002 inserting Section 4(1a) into the State Act as the entire field stood occupied by the Central Chit Funds Act, 1982 without the assent of the President as envisaged under Article 254(2), however, we find that Section 4(1) of the Central Chit Funds Act, 1982 is much wider and more stringent than Section 4(1a) of the Kerala Chitties Act, 1975, as amended by Finance Act No. 7 of 2002,

inasmuch as under Section 4(1) of the Central Chit Funds Act, 1982, no chit shall be commenced or conducted without obtaining sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted and unless such chit is registered in that State in accordance with the provisions of the Central Chit Funds Act 1982.

Conclusions

28. To sum up, our conclusions are as follows :-

i) On timing, we hold that, repugnancy arises on the *making* and not commencement of the law, as correctly held in the judgment of this Court in **Pt. Rishikesh and Another v. Salma Begum (Smt)** [(1995) 4 SCC 718].

ii) Applying the above test, we hold that, on the enactment of the Central Chit Funds Act, 1982, on 19.08.1982, which covered the entire field of "chits" under entry 7 of List III of the Constitution, the Kerala Chitties Act, 1975, on account of repugnancy as enshrined in Article 254(1), became void and stood impliedly repealed. That, on the occupation of the entire field of "chits", the Kerala Legislature could not have enacted the State Finance Act No. 7 of 2002, inserting Section 4(1a) into the Kerala Chitties Act, 1975, particularly on the failure of the State in obtaining Presidential assent under Article

254(2).

iii) That, the Central Chit Funds Act, 1982 though not brought in force in the State of Kerala is still a law *made*, which is alive as an existing law. By reason of Article 367 of the Constitution, the General Clauses Act, 1897 applies to the repeal. Section 6 of the General Clauses Act, 1897 is, therefore, relevant, particularly Sections 6(b) and 6(c) and consequently, the previous operation of the Kerala Chitties Act, 1975 is not affected nor any right, privilege, obligation or liability acquired or incurred under that repealed State Act of 1975. Thus, after 19.08.1982, the Kerala Chitties Act, 1975 stands repealed except for the limited purposes of Section 6 of General Clauses Act, 1897. If and when the Central Government brings into force the Chit Funds Act, 1982 by a notification in State of Kerala, under Section 1(3), Section 90(2) will come into play and thereby the Kerala Chitties Act, 1975 shall continue to apply only to chits in operation on the date of commencement of the Central Chit Funds Act, 1982 in the same manner as the Kerala Chitties Act, 1975 applied to chits before such commencement.

29. The reference is answered accordingly.

.....CJI
(S. H. Kapadia)

.....J.
(D.K. Jain)

.....J.
(Surinder Singh Nijjar)

.....J.
(Ranjana Prakash Desai)

.....J.
(Jagdish Singh Khehar)

New Delhi;
May 08, 2012