

**(1964) 04 GUJ CK 0011**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 39 of 1963**

|                                                        |            |
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| Ahmedabad Millowners" Association and Another          | APPELLANT  |
| Vs                                                     |            |
| Thakore (I.G.) (President Industrial Court) and Others | RESPONDENT |

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**Date of Decision : 30-04-1964**

**Acts Referred:**

Bombay Industrial Relations Act, 1946 — Section 40(2), 73A  
Government of India Act, 1935 — Section 107(2)  
Industrial Disputes Act, 1947 — Section 7(1)

**Citation : AIR 1965 Guj 112 : (1964) GLR 705 : (1965) 1 LLJ 567**

**Hon'ble Judges : J.M. Shelat, C.J;M.U Shah, J**

**Bench : Division Bench**

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## **Judgement**

Shelat, C.J.—This is a petition for a writ of certiorari or any other appropriate writ quashing the reference dated 29 July, 1961 made under S. 73A of the Bombay Industrial Relations Act, 1946, by respondent 2 association to the industrial court and the order made by the industrial court negating certain preliminary issues raised by the petitioner-association and for restraining the industrial court from proceeding further with the reference. The reference was made in the following circumstances.

2. Under the standing orders settled under the Bombay Industrial Relations Act, 1946, which are determinative under S. 40(2) of the Act in respect of matters enumerated in Sch. I thereto including "conditions, procedure and authority to grant leave" and in particular standing orders 11 and 12 and binding on the petitioners and respondent 2 association, it was provided that service for a total period of twelve months in a textile mill should qualify an operative for a total period of one months leave with or without pay according to the terms of the contract custom or usage of the mill and grant of such leave should depend on the exigencies of the mill and should be at the discretion of the company. These standing orders also provided that an operative may be granted casual leave of absence with or without pay not exceeding ten days in the aggregate in a calendar year. Such leave however should not be for more than three days at a

time except in case of sickness and was intended to meet special circumstances which could not be foreseen. On 21 April, 1961, respondent 2 association gave a notice of change to the petitioners desiring that the employees employed in the member mills of the petitioner-association excluding the clerical technical and supervisory staff be granted benefits of different types of leave with wages such as casual privilege and sick leave. Since the parties could not arrive at any agreement the matter was taken in conciliation Respondent 2 association obtained a certificate of failure of conciliation and thereafter made a reference of the dispute to the industrial court under S. 73A of the Bombay Industrial Relations Act, 1946.

3. Before the industrial court, the petitioner association raised certain preliminary issues. These were :

1. Whether the Bombay Industrial Relations Act, 1946 was validly in force in the cotton textile industry in Ahmedabad area in view of the Industrial Disputes Act, 1947, and its subsequent amendments ?

2. (a) Whether the amendments made in Schs. I and II of the Act in the matter of leave by notification of the State Government were illegal ultra vires and unconstitutional ?

(b) If so whether the reference was legally competent ?

3. Whether S. 73A of the Act is illegal ultra vires and unconstitutional ?

4. Whether the provisions of leave with wages in the Factories Act, 1948 operated as a bar to this reference ?

5. Whether this reference was premature and incompetent in view of the five years period having not expired as per the wage board recommendations implemented by a consent award between the parties ?

4. Since these issues raised constitutional questions as regards the validity of the reference under S. 73A the Act, notice was issued to the State Government and the Government was heard. The industrial court repelled the contentions raised by the petitioner association and held inter alia that the reference to it was a valid one and it had jurisdiction to decide it. The present petition disputes the correctness of that order on various contentions raised therein. Before we proceed to deal with those contentions it is necessary to bear in mind a few dates.

5. The Bombay Industrial Disputes Act, XXV of 1938, was enacted in 1938 and received the assent of the Governor-General on 24 February, 1939. Section 2(1) provides that Ss. 1 and 2 shall extend to the whole of the province of Bombay. It also provides that the Provincial Government may by notification extend all or any of the remaining provisions of the Act to such areas as may be specified in such notification. Sub-section (2) empowered the Provincial Government to direct by notification that all or any of the remaining provisions shall come into force in

any area to which the said provisions extend or may be extended under sub-section (1) on such dates as may therein be specified and sub-section (3) provided that the Provincial Government may direct by notification that all or any of the provisions of the Act shall apply to such industry as may therein be specified. In exercise of the powers under S. 2, the then Government of Bombay by notifications dated 14 March and 30 May, 1939 as amended on 10 June and 21 July, 1939 and 11 January, 1940, and notification dated 20 August 1939, brought into force the remaining provisions of the Act on the respective dates of these notifications and applied them to the cotton textile industry throughout the province as specified therein. The Industrial Disputes Act XIV of 1947, was thereafter enacted and received the assent of the Governor-General on 17 March, 1947. Under S. 1(2) as originally enacted, it extended to the whole of British India and was brought into force under S. 1(2) as from 1 April, 1947. In the meantime the Provincial Legislature of Bombay passed the Bombay Industrial Relations Act 1946, which received the assent of the Governor-General on 15 April, 1947, and was brought into force on 29 September, 1947, Section 2(3) provided that in the areas in which the Bombay Industrial Dispute Act, 1938, was in force immediately before the commencement of this Act, this Act shall apply to the Industries to which the said Act applied and S. 2(4) provided that the State Government may by notification in the official Gazette apply all or any of the provisions of this act to all or any other industries whether generally or in any local area as may be specified in such notification. Entry 6 in Sch. I to the Act as originally passed was as follows :

"Conditions, procedure and authority to grant leave".

6. This entry was amended by notification No. 1237 of 1946, dated 23 October, 1952, and so amended it ran as follows :-

"Entry 6 - Procedure and authority to grant leave."

7. By a notification No. 1237 of 1946, dated 28 February, 1953 entry 11 in Sch. II was added and the entry so added was as follows :-

"All matters pertaining to leave and holidays other than those specified in items 6 and 7 in Sch. I."

8. It is an admitted position that neither the Bombay Government nor the Government of Gujarat State has so far issued any notification under S. 2(4) of the Bombay Industrial Relations Act 1946, applying the Act to cotton textile industry in Ahmedabad. But the position taken up by the learned Advocate General for the State of Gujarat was that s. 2(3) and not S. 2(4) applied to the facts of the present case and that since the Bombay Industrial Disputes Act, 1938, was in force immediately before the commencement of the Bombay Industrial Relations Act, 1946, i.e., till its repeal by S. 122 of the Act and as the aforesaid notifications issued under the Bombay Industrial Dispute Act 1938, applied the provisions of that Act to the cotton textile industry as specified therein, there was no necessity to issue any notification under S. 2(4) of the

Bombay Industrial Relations Act and the provisions of the Bombay Industrial Relations Act therefore applied to the cotton textile industry in Ahmedabad and therefore the reference made by respondent 2 association under S. 73A of the Bombay Industrial Relations Act was a valid reference.

9. The contentions on the other hand urged by Sri Patwari for the petitioner-association contesting the position taken up by the respondents were as follows :-

(1) That the Bombay Industrial Dispute Act, 1938, and the Industrial Dispute Act, 1947 (hereinafter referred to as the Central Act), covered the same field and, therefore, under S. 107(2) of the Government of India Act, 1935, the former Act became void as from 1 April, 1947, when the Central Act applying to the whole of British India was brought into force.

(2) That the Bombay Industrial Dispute Act, 1938, having been rendered void as aforesaid, the notifications issued thereunder were of no effect. The Bombay Industrial Dispute Act having become void as from 1 April, 1947, it could not be said to be in force immediately before the commencement of the Bombay Industrial Relations Act, 1946, and, therefore, S. 2(3) of the Bombay Industrial Relations Act would not apply and no notification having admittedly been issued under S. 2(4) thereof the Bombay Industrial Relations Act would not apply to the cotton textile industry in Ahmedabad.

(3) And consequently S. 73A thereof would not apply and any reference thereunder made would be without jurisdiction and could not be entertained for that reason by the industrial court.

(4) That the Bombay Industrial Relations Act, 1946, was rendered void by reason of the Central Act having been amended from time to time and in particular by the amendment Acts passed in 1951 and 1956 and the failure to obtain fresh assent of the President in respect of the Bombay Industrial Relations Act.

(5) That the amendments in Schs. I and II of the Bombay Industrial Relations Act regarding the item of leave are unconstitutional and ultra vires the Act.

(6) That S. 73A is unconstitutional and invalid -

(a) being discriminatory and therefore, violative of Art. 14, and

(b) being void as being repugnant to the provisions of the Central Act as amended in 1951 and 1956.

(7) That the provisions of the Bombay Industrial Relations Act, 1946, to the extent to which they deal with leave with pay, are void, being repugnant to the Factories Act, 1948, and, therefore, the reference under S. 73A relating to leave with pay is barred.

(8) That the reference is incompetent and premature by reason of its being contrary to the recommendations made by the Central Wage Board appointed for the cotton textile industry in its report dated 27 November, 1959 and duly

implemented by the petitioner-association.

As regards the first question the contention urged by Sri Patwari was that the two Acts the Bombay Industrial Disputes Act, 1938, and the Central Act occupied the same field that though the Central Act does not expressly repeal the Bombay Industrial Disputes Act, the latter Act was repugnant to the former Act and therefore the resultant effect was that under the provisions of S. 107 of the Government of India Act, 1935, the Bombay Industrial Disputes Act, stood impliedly repealed. Sri Patwari submitted thus the subject-matter of the two legislations and the period of their operation were so identical that both cannot stand side by side and therefore the provincial legislation was totally repugnant to the Central Act and must be held to have been impliedly repealed in its entirety. He pointed out the preambles of the two statutes and contended that looking to the pith and substance of the subject-matters dealt with by them the object of the two Acts was the same, viz., the settlement of Industrial Disputes between the employers and the employees, the harmony of relations between the two and industrial peace. In a detailed examination of the sections of the two Acts, he endeavored to point out that besides the identity of the subject-matter and the objects of the two statutes, the two Acts established similar authorities for achieving those objects. Under the Bombay Industrial Disputes Act, these authorities were the conciliator the board of conciliation and the court of industrial arbitration under Ss. 20, 23 and 24, Chapters VI and VII of the Act deal with conciliation and voluntary arbitration and Bombay indu 62 and 63 dealt with illegal strikes and lockouts and Chap. X dealt with penalties for infractions of the several provisions of the Act. Sections 74 and 75 of the Act dealt with the representative character of unions of workmen intended for the preservation of the right of collective bargaining by the employees. Sri Patwari argued that a similar scheme was followed in the Bombay Industrial Disputes Act which provides for conciliators (S. 4), a board of conciliation (S. 5), labour courts (S. 7), tribunals (S. 7A) and national tribunals (S. 7B). Sections 26 to 31 deal with illegal strikes and lockouts and penalties and just as the Bombay Industrial Disputes Act provides for representation of employees so does S. 36 of the Central Act. Both the legislatures had no doubt jurisdiction to pass the two Acts, as they fell under item 29 of part II of list III of the concurrent Legislative List in the 1935 Act, viz.,

"Trade unions, industrial and labour disputes,"

10. but as the two Acts deal with the same subject-matter, the Bombay Act must give way to the Central Act and became void as from 1 April 1947 when the latter Act was brought into force under sub-section (1) of S. 107 of the Government of India Act 1935. Sri Patwari relied on Zaverbhai Amaidas Vs. The State of Bombay, , where the Supreme Court had to deal with similar situation though the constitutional provision there concerned was Art 254 of the constitution and not S. 107 of the Government of India Act 1935. But that would make no significant difference as Art, 254 is in substance a repetition of S. 107

of the Government of India Act, 1935, and the principle embodied in both is that when there is legislation covering the same ground both by the Centre and the province or the State both being competent to enact the same, the law of the centre must prevail over that of the province or the state. The facts in that case were that the Central Legislature first enacted the Essential supplies (Temporary Powers) Act, XXIV of 1946, which was made applicable to the whole of British India. Section 3 of that Act empowered the Central Government to issue orders for regulating the production, supply and distribution of essential commodities and under S. 4, this power could be delegated to the Provincial Government. Section 7(1) provides for punishment for contravention of orders issued under the Act. The Province of Bombay felt that the punishment provided under S. 7(1) was not adequate and therefore enacted Act XXXVI of 1947 wherein the maximum punishment for breach of any order made or deemed to be made under S. 3 was seven years. This section was avowedly repugnant to S. 7(1) of the Central Act, but on the footing that the subject-matter of the Bombay Act XXXVI of 1947 fell within the Concurrent List, the Bombay Government obtained the assent of the Governor-General and brought that Act into force as from 25 November, 1947. The position therefore was that under S. 107(2) of the Government of India Act, 1935, the Bombay Act prevailed in Bombay over the Central Act though it was at the same time subject to any further legislation with respect to the same matter that might be enacted by the Central Legislature. There was thereafter such further legislation by the Central Legislature first in 1948, then in 1949, and finally in 1950, the last being after the constitution came into force and, therefore, Art. 254 instead of S. 107 of the Government of India Act, applied. The Supreme court held that Act LII of 1950 passed by the Central Legislature was legislation in respect of the same matter as the Bombay Act XXXVI of 1947 within the meaning of Art. 254(2) of the constitution and therefore S. 2 of Bombay Act could not prevail as against S. 7 of the Central Act as amended by Act LII of 1950. At pp. 756-757 of the report, the Supreme Court considered the provisions of S. 107(2) of the Government of India Act an Art. 254(2) of the constitution and observed that whereas under S. 107(2) the Parliament had no power to repeal a provincial law directly. The proviso to Art. 254(2) of the Constitution has enlarged the powers of Parliament and therefore, it can enact a law adding to, amending, varying or repealing a law of the State when it relates to an item in the concurrent List. Where it does not expressly do so, even then the State law would be void if it conflicts with a later law with respect of the same matter that may be enacted by Parliament. At p. 758 the supreme court repeated the same principle and stated :

"It is true, as already pointed out, that on a question under Art. 254(1) where an Act of Parliament prevails against a law of the State, no question of repeal arise; but the principle on which the rule of implied repeal rests mainly that if the subject-matter of the latter legislation is identical with that of the earlier so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Art. 254(2) where the

further legislation by Parliament is in respect of the name matter as that of the State law."

11. It is thus clear that under S. 107 of the Government of India Act if a provincial law is repugnant to any federal law which the Central Legislature is competent to enact or to any existing Indian law with respect to the matters in the Concurrent Legislative List, the federal law whenever passed before or after the provincial law or, as the case may be, the existing Indian law would prevail and the provincial law to the extent of repugnancy would be void. But this rule is subject to sub-section (2) of S. 107 which provides that where a provincial law with respect to one of the matters in the Concurrent list contains any provision repugnant to the provisions of an earlier federal law or an existing Indian law, with respect to one matter, then, if the provincial law has received the assent of the Governor-General or of His Majesty, the provincial law shall in the province prevail unless the federal legislature may at any time enact further legislation with respect to the same matter Under the proviso to Sub-section (2), no Bill or amendment for making any provision repugnant to any provincial law which has received the assent of the Governor-General or His Majesty can be introduced or moved in the Central Legislature without the previous sanction of the Governor-General in his discretion. Except for the additional power of directly repealing the State law to the parliament the position under Art. 254 is the same. Therefore, under Sub-section (1) of S. 107 of the Government of India Act which applies to the case before us, it would be the Central Act that would prevail wherever the two Acts deal with the same matter and the provincial law would be void to the extent of the repugnancy. Sri Patwari however argued that though the provincial law would be void under S. 107(1) of the Government of India Act 1935, to the extent of its repugnancy and therefore what would be void would not be the entire Act but only that part which is repugnant, in the present case, the identity of the field occupied by both the Acts when considered from the pith and substance of the subject-matter of the two statutes and also the period of their operation so completely coincided that the repugnancy is complete and consequently the whole of the Bombay Act of 1938 has become void. Based on this reasoning, his submission was that the subject-matter of both the Acts was the same, viz., the settlement of Industrial disputes, that both set up authorities and machinery to deal with such disputes, that therefore they occupy the same field and operate during the same period. Consequently, the whole of the Bombay Act become void as from 1 April, 1947 when the Central Act came into force as if from that day the Bombay Act ceased to be on the statute book and the notifications issued thereunder by the Bombay Government applying that act to the cotton textile industry also became void and of no effect, Following this reasoning, Sri Patwari argued that there was an interregnum between 1 April, 1947 and 29 September, 1947 when the Bombay Industrial Relations Act, 1946, was brought in force the Bombay Act of 1938 having become void as from 1 April, 1947. Therefore the argument ran S. 2(3) of the Bombay Industrial Relations Act would not apply as the Bombay Act of 1938 cannot be aside to be

in force immediately before the commencement of the Bombay Industrial Relations Act, 1946, and therefore, unless that Act was made applicable to the textile industry by a notification under S. 2(4) of that Act, the Act would not apply and any reference made under S. 73A would be unauthorized and bad in law. In support of his contention, Sri Patwari drew our attention to an unreported decision of the Supreme Court in *State of Orissa Vs. M.A. Tulloch and Co.*, . At the material time, the respondent-company was working a manganese mine in the State of Orissa under a lease granted by that State under the provisions of the Mines and Minerals (Development and Regulation) Act, 1948, and the rules made thereunder. While the company was thus working the mines, the State Legislature passed an Act called the Orissa Mining Areas Development Fund Act, 1952, and under powers conferred under that Act, the State Government was empowered to levy a fee on a percentage of the value of the mined ore at the pit's mouth, the collections being intended for the development of the mining areas in the State. The State Government thereafter made demands on the respondent-company for the payment of the fees. Thereupon the respondent-company filed a writ petition before the High Court of Orissa, impugning the legality of the demand. The High Court allowed the writ petition and issued directions to appellant 2 in terms of the prayers in the petition. The contention which the High Court accepted was that the Orissa Act had been rendered ineffective or suppressed by Central enactment, namely, the Mines and Minerals (Regulation and Development) Act, 67 of 1957, which came into force from 1 June, 1958. The Orissa Act was enacted by the State legislature under entry 23 of the State legislative List which was in the following terms :

"Regulation of mines and mineral development subject to the provisions of list I with reference to regulation and development under the control of the Union."

12. The legislative entry under which the Central Act. 67 of 1957 was enacted was item 54 of the union List which was :

"regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

13. Section 2 of the Central Act contained a declaration in terms of the last words of the entry. On these facts, the High Court accepted the contention that on the coming into force of the Central Act, the Orissa Act ceased to be operative by reason of the withdrawal of the legislative competence by force of the entry in the State List being subject to the Parliamentary declaration and the law enacted by parliament and held that the Orissa Act should be deemed to be non-existent as and from 1 June, 1958 with the result that there was lack of power to enforce and realize demands for the payment of the fees at the time when the notice for the demand were issued and were sought to be enforced. The supreme court examined entry 23 of the State List which vests in the State Legislature power to enact laws on the subject of regulation of mines and mineral development subject to the provisions of list I with respect to regulation and development

under the control of the Union and entry 54 in the Union List, and held that the Central Act having been enacted by parliament in exercise of the legislative power contained in entry 54 and containing a declaration in terms of what is required under that entry, there could be no argument that to the extent to which the Union Government had taken under its control the regulation and development of minerals so much was withdrawn from the ambit of power of the state Legislature under entry 23 of the State List. The decision cannot help Sri Patwari because the question there involved was not so much of repugnancy between the provisions of the two enactments but of a denudation of deprivation of state legislative power by the declaration which Parliament was entitled to make and had made. Repugnancy, as stated in this decision, 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. Two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The existence of two legislations containing contradictory provisions is however not 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 enactment 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 the provisions of the two statutes, but by the mere existence of the two powers of legislation. In the case before it, the Supreme Court held that having regard to S. 18(1) of the Central Act, the intention of Parliament was to cover the entire field and therefore the State Act stood superseded as from the date when the Central Act of 1957 came into force. This supersession of the State legislation had the effect of an implied repeal and the Court, on the reasoning to be found in the latter part of the judgment, held that the effect was the same as that of an express repeal and in such cases S. 6 of the General Clauses Act would apply. The Supreme Court therefore held that the liability to pay the fee having accrued before 1 June, 1958, i.e. before the Central Act, LXVII of 1957, had come into force, that liability was saved, that the notices of demand were valid and the State Government was entitled to recover the fees due under those notices. The decision, far from being one on the question of repugnancy helps in one way the Advocate-General rather than Sri Patwari in view of the observations quoted above on the effect of repugnancy as we shall presently point out. But before we do that, it is better to ascertain what exactly is the principle of repugnancy and how it has to be ascertained.

14. In *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, , one of the contentions raised before the Supreme Court was that the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, XXIV of 1953, was repugnant to the Industrial (Development and Regulation) Act, LXV of 1951, as amended by Act XXVI of 1953 and to the Essential Commodities Act, X of

1965, the latter two being the Central Acts, that the latter two Acts should prevail and the impugned Act should, to the extent of repugnancy, be void. Defining the connotation of the term "repugnancy." Bhagwati, J., who spoke for the Bench, stated :

"Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field, because, if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise."

15. After citing Nicholas on Australian Constitution, 2nd Edn., p. 303, and other authorities, he adopted three tests formulated by Nicholas, viz. :

- (1) inconsistency in the actual terms of the compelling statutes,
- (2) the Central Act being intended to be a complete exhaustive code, and
- (3) when even in the absence of such intention, a conflict may arise when both the statutes seek to exercise their powers over the same subject-matter.

16. In case where there is no question of inconsistency, it would become necessary to compare the two statutes to discover whether the two legislatures sought to exercise their powers over the same subject matter or whether the law enacted by the Parliament was intended to be a complete exhaustive code or, in other words, evinced expressly or impliedly an intention to cover the whole field. In *Ex parte McLean* [(1930) 43 C.L.R. 472], the question was as to the interpretation of S. 109 of the Australian Constitution which is to the same effect as S. 107(1) of the Government of India Act and Art. 254(1) of the Constitution except that there the word "inconsistency" instead of the word "repugnancy" is used. On an information for an offence under S. 4 of the Masters and Servants Act, 1902 (N.S.W.), the defendant was convicted and fined for neglecting to fulfill the contract made between the informant (his employer) and himself in pursuance of an award made by the Commonwealth Court of Conciliation and Arbitration which bound both parties and required them to perform the contract. The very same conduct by the same persons was punishable but somewhat differently under the Commonwealth Conciliation and Arbitration Act. It was held that the State Act was invalid *pro tanto* by virtue of S. 109 of the Constitution and that the conviction was therefore bad. Dixon, J., at p. 453 of the report observed that

"when the Parliament of Commonwealth and the Parliament of a State each legislature upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent notwithstanding that the rule of conduct is identical which each prescribes and S. 109 applies. That this is so is settled at least when the sanctions they impose are diverse. [*Humme v. Palmer* [(1926) 38 C.L.R. 441.]] But the reason is that by prescribing the rule to be observed, the federal statute shows an intention to cover the subject-matter and provide what the law upon it shall be, If it appeared that the federal law was

intended to be supplementary to or cumulative upon the State law, then no inconsistency would be exhibited in imposing the same duties or inflicting different penalties. Inconsistency does not lie in the mere co-existence of the two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express by its enactment completely, exhaustively or exclusively what shall be the law governing a particular conduct or matter to which its attention is directed. When a federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter."

17. Similarly, in *State of Victoria v. Commonwealth of Australia* [(1937) 58 C.L.R. 618], the question was as to the inconsistency between S. 13 of the Marine Act, 1928, passed by the State of Victoria and the Navigation Act, 1912-1935, passed by the Commonwealth Parliament. Evatt, J., at p. 634 drew a distinction between two Acts passed by one and the same legislature when even overlapping would be enough to cause inconsistency and Acts passed by different legislatures under a Constitution which distributes powers between the two. In the latter case, he observed, more direct proof of conflict must be established before the Court can conclude that the legislation by one is to be treated as void. He added that,

"this view is reinforced by remembering that where invalidity or repugnancy causes avoidance of legislation, it is only to the precise extent of such invalidity or repugnancy."

18. The inconsistency stressed in these decisions is dependent upon the intention of the paramount legislature and not merely in the fact of two co-existent statutes.

19. In *R.M.D.C. (Mysore) Private Ltd. Vs. The State of Mysore*, , the question was with regard to the inconsistency between the Prize Competitions Act, 1955, a Central Act, and the Mysore Lotteries and Prize Competitions Control and the Tax Act, XXVII of 1951, passed by the Mysore Legislature. The Supreme Court there held that the inconsistency between the two Acts would operate on that part of the Mysore Act which became repugnant to Ss. 4 and 5 of the Central Act as to promotion of prize competitions and licensing of prize competitions, and consequently a portion of S. 12(1)(b) of the State Act which deals with taxes in respect prize competitions for which a licence had to be obtained became void but not the rest. The Supreme Court further held that when the words "for which a licence has been obtained" under S. 8 were removed by the Mysore Amending Act, XXVI of 1957, the rest of the Clause (b) in S. 12(1) of the State Act could no longer be said to be repugnant to any of the provisions of the Central Act. At pp. 600-601, the Supreme Court clarified the position by observing that S. 12(1)(b) of the State law did not become wholly void by reason of Art. 254(1) but that all that could be said was that, that part of it which referred to licensing became repugnant. At the time when the Mysore Act was passed it was within the legislative power of the State legislature and it may be that it was rendered unconstitutional by reason of Ss. 4 and 5 of the Central Act, but that portion

which dealer with taxation could not be held void, because as result of the amending Act the words which were with retrospective effect were deleted and the doctrine of eclipse could be invoked in the case of a law which was valid when made but was rendered invalid by a supervening constitutional inconsistency. The effect of repugnancy is thus not to render the whole of the statute void but only that part of it which is inconsistent with the Central statute. The remaining statute still remains in force and even that part of it which is void can be remedied if that which is inconsistent or repugnant in it is done away with by an amending Act deleting it.

20. The question of repugnancy and its effect was again considered by the Supreme Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, . In order to appreciate the true result of that decision, it is necessary to relate a few facts leading to the petitions disposed of thereby and the contentions raised therein so far as they are relevant for our purposes. The appellants there were carrying on business as stage carriage operators on different routes in Uttar Pradesh under permits issued to them under the Motor Vehicles Act, 1939, along with buses owned by Government. The State Legislature, after obtaining the assent of the President on 23 April, 1955, passed Uttar Pradesh Transport Service (Development) Act, IX of 1955, and published it on 24 April, 1955. Under S. 3 of this Act, the Government issued a notification dated 17 May, 1955, whereunder it was directed that the aforesaid routes should be exclusively served by Government vehicles and private stage carriages should be excluded from those routes. On 12 November, 1955, the State Government published another notification under S. 4 formulating a scheme for those routes along with others routes. The appellants received notices requiring them to file their objections and after objections of certain appellants were heard, the Government issued a notification under S. 8 of the Act and thereafter the Secretary to the Regional Transport Authority sent an order prohibiting the appellants from plying their carriages on the routes and informing them that their permits would be transferred to alternative routes. The appellants filed writ petitions in the High Court challenging the validity of the Uttar Pradesh Act but they were rejected. While their appeals were pending before the Supreme Court, Parliament passed the Motor Vehicles (Amendment) Act, 100 of 1956, which was published on 31 December, 1956. Thereupon, the appellants applied for leave to urge new grounds which the Supreme Court granted. On these facts, it was contended on behalf of the appellants -

(i) that Central Act 100 of 1956 was wholly repugnant to the provisions of the Uttar Pradesh Act and therefore by reason of Art. 254(1) the State Act became void and there was no valid law whereunder the Government could prohibit the appellant from exercising their right to ply their stage carriage; and

(ii) that the scheme framed under the State Act being one made to operate in future and from day to day was an instrument within the meaning of S. 68B of the Central Act and therefore s. 68B would prevail over the scheme and the

scheme would have no force.

21. In addition to these contentions, a further contention on behalf of certain appellants was raised based on the proviso to Art. 254(2) and that was that by reason of the amending Act 100 of 1956, the Uttar Pradesh Act was repealed in toto and because of S. 68B of the amending Act, the operation of the provisions of the General Clauses Act was excluded. The State of Uttar Pradesh met these contentions by arguing that there was no repugnancy between the two Acts and therefore the Uttar Pradesh Act was neither void nor was it repealed by necessary implication. It will be seen that contentions (i) and (ii) above were similar in nature to those taken before us by Sri Patwari.

22. The Supreme Court first laid down three principles adopted by it earlier in *Zaverbhai Amaldas Vs. The State of Bombay*, , on which repugnancy can be ascertained, viz.,

- (i) where there is direct conflict between the two provisions;
- (ii) where Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislative; and
- (iii) where the Central and State laws occupy the same field.

23. Examining the two statutes from the point of view of these principles the Supreme Court held that both Acts were intended to operate in respect of the same subject-matter in the same field but that the provisions of the scheme, the principles of compensation and the manner of its payment differed in the two Acts. Therefore, the amending Act 100 of 1956 occupied the same field in respect of the schemes but the learned Judges made a distinction between the schemes framed before the coming into force of the amending Act and those that were initiated thereafter. Negating the contention based on the ground accepted by the Supreme Court that the two Acts occupied the same field and that the Central Act intended to lay down an uniform code on the subject-matter of nationalization of transport services, that the Uttar Pradesh Act became wholly void under Art. 254(1), Subba Rao, J., speaking for the majority, observed that that contention ignored the crucial words "to the extent of the repugnancy" in Art. 254(1) and that therefore what would become void was not the entire Act but only to the extent of its repugnancy with the law made by Parliament. He also observed that when the subject-matter and the period of operation coincide in the two Acts, there would be complete repugnancy and the whole of the State law would become void. But the operation of the Central Act may be entirely prospective leaving the State law to be effective in regard to things already done under the State Act. On this principle he held that Ss. 68C, 68D and 68E inserted by the amending Act were concerned with a scheme initiated after the amending Act came into force. None of these sections expressly or by necessary implication indicated that the schemes already finalized should be reopened and fresh schemes should be framed pursuant to the procedure prescribed thereunder. Therefore, under Art. 254(1) the law framed under the Uttar Pradesh Act

substituted to support the scheme framed thereunder and it became void only in respect of schemes framed after the Central Act came into force. For this result, he relied on *Keshavan Madhava Menon Vs. The State of Bombay*, where, on the question that the Indian Press (Emergency Powers) Act, 1981, was void as infringing Art. 13(1) of the Constitution, the Supreme Court had held :

"such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution and that so far as the past acts are concerned, the law exists notwithstanding that it does not exist with respect to the future exercise of fundamental rights.";

24. and held that Art. 13(1) was *pari materia* with the provisions of Art. 254(1) in that while under Art. 13(1) all pre-constitution laws, to the extent of their inconsistency with part II are void, under Art. 254(1) the State law, to the extent of its repugnancy to the Central Act, is void. He added that if the pre-Constitution law exists for the post-Constitution period for all the past transactions, by the same parity of reasoning, the state law subsists after the making of the law by Parliament for past transactions. In this view, both the laws can co-exist to operate during different periods. This result comes about as a consequence of an Act which becomes void on the ground of repugnancy without having to resort to a saving clause as regards past transactions or to provision such as those in the Interpretation Act, 1839, of England or the General Clauses Act, 1897. The principle is that a provision in a statute that with effect from a particular date an existing law would be void to the extent of the repugnancy has no retrospective effect as in the case of repeal where there is no saving clause or a provision as in the General Clauses Act and therefore does not affect pending prosecutions or actions taken under such law. There is in such a situation no necessity of introducing a saving clause and it does not need the aid of a legislative provision of the nature contained in the Interpretation Act or the General Clauses Act. To hold that a prospective declaration that a statute is void affects pending cases or finishing transactions is to give it indirectly retrospective operation. Dealing with the contention under the proviso to Art. 254(2) his lordship observed that the Parliament can repeal a State law under that proviso and can also repeal a State law which is repugnant, whether directly or by necessary implication. Assuming that Parliament by enacting the amending Act 100 of 1956 impliedly repealed the Uttar Pradesh Act, that would not have the effect of effacing the scheme already framed before the amending Act came into force and such a scheme would be saved under S. 6 of the General Clauses Act. In either way, whether the Act is viewed as having become void as a result of repugnancy or as impliedly repealed, the result would be the same and the scheme already framed would not be effaced but would be valid and binding and the Act would subsist for all past transactions and for enforcing all rights and liabilities accrued before the Central Act came into force.

25. In cases where the jurisdiction of the State Legislature under List II of the Seventh Schedule is subject to the jurisdiction of Parliament as in Entries 17, 23,

24, 38 and 54 in List II, if Parliament has passed an Act which covers the field occupied by the impugned State Act, the State Act would be ultra vires not on the ground of repugnance between the two Acts but because the State legislature had lost the jurisdiction to pass such an Act. The limitation imposed in such entries by the use of the expression "subject to" is a limitation on the very legislative competence of the State Legislature itself and a law made under such an entry would be beyond such limitation. Decisions illustrative of this category of cases are to be found in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, , and the unreported decision in Civil Appeals Nos. 561 and 562 of 1962 decided on 16 August, 1963 - *State of Orissa v. M. A. Tulloch & Co.*, already referred to earlier. These are cases where there is failure of legislative jurisdiction resulting in repeal by implication attracting the application of S. 6 of the General Clauses Act as distinguished from a case of repugnancy, though in both past transactions are saved but for different reasons. The present cases is not like the one in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, or the *State of Orissa* case, for it is a case where the contest is with regard to two statutes which are passed by two legislatures with jurisdiction and therefore cases such as *Deep Chand Vs. The State of Uttar Pradesh and Others*, and *Keshavan Madhava Menon Vs. The State of Bombay*, would more aptly apply than the two Orissa cases.

26. Having examined the principles by which repugnancy between two statutes is to be ascertained and the resultant effect of such repugnancy, we now turn to ascertain whether the Industrial Disputes Act, 1947, covers the entire field occupied by the Bombay Industrial Disputes Act, 1938. No doubt, the preamble of the Bombay Act states that the reason for enacting it was to promote peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other purposes, while the preamble of the Industrial Disputes Act also states that it was enacted to make provision for the investigation and settlement of industrial disputes. But the objects of the two statutes may be similar and yet there would be no repugnancy if they supplement each other and can co-exist if the paramount legislation does not cover the entire field occupied by the State law and is not inconsistent with the latter.

27. An examination of the two Acts from this point of view without going into a detailed comparison of the provisions of the two would prove useful. Chapter V of the Bombay Act deals with changes and S. 26 therein makes it obligatory on every employer to submit standing orders to the Commissioner for Labour for approval within the time prescribed therein regulating the relations between him and his employees in regard to all the industrial matters enumerated in Sch. I. Such standing orders when settled by the Commissioner or by the industrial court are determinative of the relations between the employees and the employer. Then follow Ss. 27 to 33 which contain a scheme for making changes in such standing orders and the manner in which such changes can be effected. Such provisions, it will be noticed, are not to be found in the Industrial Disputes Act, 1947, the reason being that the General Legislature had, before passing the

Industrial Disputes Act, already enacted the Industrial Employment (Standing Orders) Act, XX of 1946, which was brought into force on 23 April 1946 and which required employers in industrial establishments to define conditions of employment under them. Under Sub-section (3) of S. 10 of the Act, the Act was made applicable to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months and to such class or classes of other industrial establishments as the appropriate Government may from time to time by notification specify in this behalf. Though this sub-section applied to all industrial establishments with one hundred or more workmen and to others notified by the appropriate Government, the proviso to this sub-section expressly excepted from the application of the Act industries to which Chap. V of the Bombay Industrial Disputes Act, 1938, had been applied. The proviso thus is a clear indication that the intention of the Central Legislature was not to affect the industrial concerns which were subject to the Bombay Act and the standing orders settled thereunder. The Industrial disputes Act, 1947, was then enacted and brought into force from 1 April 1947, but it did not deal with or provide for standing orders presumably for the reason the Act XX of 1946 had already provided for them. Therefore, the Industrial Disputes Act, 1947, does not cover at any rate the field occupied by Chap. V of the Bombay Industrial Disputes Act, 1938, and does not contain any provisions inconsistent with those in Chap. V of the Bombay Act and therefore the Industrial Disputes Act cannot be said to be repugnant to the provisions of chap. V of the Bombay Act. The provisions of Act XX of 1946, though they deal with standing orders, a subject covered by the Bombay Act, are also not repugnant because the proviso to S. 1(3) in clear terms saves and excepts from the application of the Act industries to which the Bombay Act of 1938 had been applied and the standing orders which were made and settled thereunder. Furthermore S. 14 of Act XX of 1946 empowered the appropriate Government to exempt any industrial establishment or class of industrial establishments from all or any of the provisions of the Act, another indication that the Central Legislature did not desire to have this Act an overriding effect on State Acts in force in the States. Section 73 of the Bombay Industrial Disputes Act, 1938, deals with illegal changes and prohibits an employer from making any change in any industrial matter in regard to which a standing order has been settled under S. 26 or which is set out in Sch. II before an agreement as contemplated by S. 30(1) is arrived at or where no such agreement is arrived at before the conciliation proceedings are completed or in cases where there is a registered submission before the arbitration proceedings relating thereto are completed or in cases where any dispute relating to such industrial matter has been referred to the industrial court for its decision before such decision is given. It also prohibits an employer from making any change made in contravention of a registered agreement, a settlement or an award and provide that any change made in contravention of these provisions shall be illegal. No such provisions were made in the Industrial Disputes Act, 1947, until 1956 when by Act XXXVI of 1956 Chap. II-A dealing with notice of change was inserted for the first time in

the Act. It may also be noticed that the Industrial Disputes Act, 1947, does not contain provisions providing for representative character to unions of workmen, an instrument well-recognized in industrial matters for collective bargaining as the Bombay Industrial Disputes Act, 1938, does by Chap. II therein. In 1949, the Central Legislature passed the Industrial Disputes (Banking and Insurance Companies) Act which was published on 14 December 1949. The object of the Act was to provide for adjudication of industrial disputes concerning banking and insurance companies having branches or other establishments in more than one State. Section 4 of the Act prohibited references by State Government of disputes concerning any banking or insurance company or any matter relating to such disputes to any tribunal or authority for adjudication, inquiry or settlement and S. 5 provided for withdrawal and abatement of proceedings relating to such disputes pending before State tribunals on references of such disputes to tribunals constituted by the Central Government. These provisions clearly show that the Central Legislature was conscious that there were in force State laws such as the Bombay Industrial Disputes Act, 1938, under which the State Governments were competent to deal with disputes concerning banking and insurance companies and which required to be withdrawn from the jurisdiction of the States presumably on the ground of their all-India character which required uniform decisions all throughout the country. However, the fact that only the disputes relating to banking and insurance companies were withdrawn from the jurisdiction of State Governments and the tribunals appointed under the State laws, shows that so far as the rest of the disputes were concerned, the State laws were to operate and remain in force. Thereafter the Central Legislature enacted the Industrial Disputes (Appellate Tribunal) Act, 48 and 1950, for the establishment of an Appellate Tribunal in relation to industrial disputes and for certain matters incidental thereto. Under S. 2(c) "industrial tribunal" was defined a meaning any tribunal constituted under the Industrial Disputes act, 1947, or in relation to cases where an appeal lay to any Court, wage board or authority set up in any State under any law relating to the adjudication of industrial disputes made, whether before or after the commencement of this Act, by the legislative authority of the State to any other Court, board or authority set up in the State under such law that Court, board or authority exercising appellate jurisdiction within that state or in relation to other cases, where no appeal lay under law referred to above any Court, board or authority set up in any State under such law. The definition thus in express terms saved the Court, board or authority constituted under the existing State laws and its jurisdiction under such State law. Chapter III of the Act made certain provisions relating to industrial tribunals set up under other laws. Section 18 provided for the period for the commencement of an award or decision of an industrial tribunal which under the aforesaid definition included a Court, board or authority constituted under State law and S. 20 made provision for recovery of money due from an employer under such award or decision. These provisions, far from being inconsistent with State laws such as the Bombay Industrial Disputes Act, 1938, were complementary to and supplemented the provisions of such laws, for Ss. 18 and

29 of the Act provided for the period and the machinery for recovery of dues payable under an award or decision of the Court, board or authority. These amendments have not been shown by Sri Patwari as being inconsistent to or in conflict with the Bombay Industrial Disputes Act, 1938, nor did he advance any argument that they were so. The Industrial Disputes (Amendment and Temporary Provisions) Act, 40 of 1951, which received the assent of the President on 26 June 1951 dealt with banking companies only and would at the most be repugnant to the extent of such of the provisions of the State laws which deal with or affect industrial matters concerning such companies but not the rest of the provisions of State laws. The Industrial Disputes Act, 1947, has since then been amended from time to time by Acts 18 of 1952, 43 of 1953, 48 of 1954, 36 of 1956, 41 of 1956 and 18 of 1957 and though extensive additions are made in the principal Act, none has been shown to be repugnant to the Bombay Industrial Disputes Act, 1938. On the contrary, as shown earlier, some of them have saved the provisions of the State Act and the jurisdiction and powers of the Court, board or authority constituted thereunder.

28. It is clear from the language used both in S. 107 of the Government of India Act, 1935 and Art. 254 of the Constitution that in case of legislation on the items in the Concurrent List the State law would become void only to the extent of repugnancy, but it is not as if the entire law is effaced or obliterated from the statute book as would be the case where such law is ultra vires because of failure or absence or deprivation of jurisdiction of the legislature concerned. In any event, provisions such as those in Chap. II, Chap. V and S. 73 of the Bombay Industrial disputes Act, 1938, which are not covered by the Industrial Disputes Act, 1947, and those which are expressly saved by the Central Acts referred to above cannot be held to be void on the ground of repugnancy, even if the rest may be so treated and therefore, to the extent of those provisions at least the Bombay Act can be regarded as being in force immediately before the commencement of the Bombay Industrial Relations Act, 1946, i.e., 29 September 1947. Even assuming that the whole of the Bombay Industrial Disputes act, 1938, were held to have become void as from 1 April 1947, when the Industrial Disputes Act came into force, the Supreme Court's pronouncement in Keshavan Madhava Menon Vs. The State of Bombay, and Deep Chand Vs. The State of Uttar Pradesh and Others, make the position clear that the past transactions already completed would not be affected and the entire machinery provided in the Act would be available to enforce the rights and liabilities which accrued or arose under and in respect of such transactions. Even if the repugnancy were held to result in repeal by implications, S. 6 of the General Clauses Act would apply to such past transactions and again the provisions of the repealed Act would be available for the enforcement of rights and liabilities arising from such transactions. In any view of the matter, therefore, the 1938 Act must be held to be in force immediately before the commencement of the Bombay Industrial Relations Act, 1946, and therefore, it would be S. 2(3) and not S. 2(4) of the latter Act which would apply and therefore no notification under S. 2(4) would be

necessary for the application of the Bombay Industrial Relations Act to the cotton textile industry. We are supported in this conclusion by the very enactment of Ss. 2(3) and 122 of the Bombay Industrial Relations Act. The State Legislature surely would not have considered it necessary to include Sub-section (3) in S. 2 if it had thought that the Bombay Industrial Disputes Act had become void and could no longer be said to be in force immediately before the commencement of the Bombay Industrial Relations Act. A comparison of the two Acts clearly points out that the intention of the legislature was to leave it to the State Government to decide as to when, and to what industries and in which areas the provisions of the two Acts should be brought in force and made applicable. The legislature thought that the State Government would be the better authority rather than itself to decide these questions and therefore is left the decision of these matters to the Government. But when the Bombay Industrial Relations Act was passed, the Bombay Industrial Disputes Act had already been in force for a fairly long period and by notifications had been applied to several areas and industries including the cotton textile industry. There was, therefore, no question for the State Legislature having then to decide whether the new Act should be applied or not to such industries to which the Bombay Industrial Disputes Act had already been applied and it was therefore that it provided under S. 2(3) that the new Act would automatically apply to those areas and industries to which immediately before its commencement the Bombay Industrial Disputes Act was applied and was in force. For the rest of the industries or areas, as there was no such experience, the legislature again left it to the discretion of the Government to apply by means of a notification the new Act as and when the Government thought fit. Similarly, S. 122 became necessary, because the Bombay Industrial Disputes Act was, as aforesaid, still in force and since the new Act was intended to substitute the old Act, its repeal had to be provided for. Both these provisions therefore show the intent of the State Legislature and its awareness that the Bombay Industrial Disputes Act was in force immediately before the commencement of Bombay Industrial Relations Act. Sri Patwari however argued that Ss. 2(3) and 122 were enacted because the State Legislature erroneously believed that the Bombay Industrial Disputes Act was in force though in fact it had already become void as from 1 April 1947 and there was a vacuum during the period from 1 April 1947 to 29 September 1947. But to accept that contention would be tantamount to accept a facile argument that the legislature had erred and was not conscious of the enactment of the Industrial Disputes Act and its effect on its own statute, a thing quite contrary to well-established canons of construction. In our view, for the reasons aforesaid, we cannot sustain the contentions of Sri Patwari that

(1) the Bombay Industrial Disputes Act became void and ceased to be in force as from 1 April 1947, and

(2) that the Bombay Industrial Relations Act did not apply to cotton textile industry by reason of a notification under S. 2(4) applying the Act to this industry not having been issued by the State Government.

29. The contention next urged on behalf of the petitioners was that S. 73A of the Bombay Industrial Relations Act, under which the impugned reference has been made, did not apply as neither the Bombay nor the Gujarat Government ever issued a notification bringing the section into force and consequently; no valid reference could be made thereunder. Section 73A was first introduced in the Act by Bombay Act 43 of 1948 and that section was later on substituted by the present section by Bombay Act 63 of 1953 published in the Gazette on 27 November 1953. The argument was that under S. 2 of the Bombay Industrial Disputes Act, 1936, only Ss. 1 and 2 of that Act were brought into force at one and the same time but so far as the remaining sections of that Act were concerned, they were to come in force and apply to such areas and such industries and from such time as the Provincial Government may notify. Accordingly, the Provincial Government had issued several notifications from time to time bringing into force and applying the provisions of the Act to different areas and different industries. It was also pointed out that when S. 49A was added in the Act by Bombay Act X of 1941 a notification bearing No. 4599 of 1934 and dated 14 June 1941 had to be issued and it was under that notification that the new section was brought into force. According to Sri Patwari this scheme is followed by the legislature in the Bombay Industrial Relations Act also for under S. 2(1) though the Act extended to the whole of the State, under Sub-section (2) it was to come into force from such date as the State Government may by notification specify and under Sub-sec (4) all or any of the provisions of the Act were to apply to all or any other industries except those to which Sub-section (3) applied, whether generally or in any local area as may be specified in such notification. No such notification having been issued, S. 73A was not brought into force and therefore, the present reference could not be made thereunder. In support of his contention, Sri Patwari relied upon a decision of the Bombay High Court in *Central India Spinning and Weaving Company, Ltd. v. Rashtriya Mill Mazdoor Sangh* 1958 I.C.R. 938 where the High Court held that a reference regarding bonus made under S. 38A of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, was not maintainable as the State Government had failed to bring that section into force, by its omission to issue the required notification. When the Act was originally passed in 1947, it contained 61 sections. Section 1(3) of the Act provided that S. 1 was to come into force at once and the Government may by notification bring the remaining sections or any of them into force in such area or industry and on such date as may be specified in the notification. Accordingly, the State Government issued a notification on 20 November 1947 by which Ss. 2 to 61 were brought into force in all the industries except cotton textile industry and certain other industries mentioned therein. On 22 February 1951 another notification was issued amending the earlier one by which Ss. 2 to 61 were applied to cotton textile industry also. Section 38A was inserted in the Act in 1955 and the result of the amendment made in the Act in 1955 was that that section became part of the Act and therefore had to be read along with S. 1. The High Court held that therefore under S. 1(3) a notification became necessary before the new section

could be applied, it not being a separate enactment and consequently could not be deemed to have come into force as soon as the amending Act of 1955 was passed. The High Court observed that the fact that the Government had made Ss. 2 to 61 applicable to the textile industry showed that the intention was to make the provisions of the Act applicable to that industry as they stood at the time of the notification. Section 38A having been passed subsequently, it could not be said that the Government then intended that even the amendments which might be passed in the Act thereafter should also automatically apply to the textile industry. Besides, the Government had no power on 22 February 1951 to apply to textile industry provisions which were not in existence and were not part of the Act then. Reliance was also placed on the *The State of Bombay Vs. Salat Pragji Karamsi*, . By Clause 3 of the Kutch (Application of Laws) Order, 1949, the Bombay Prevention of Gambling Act, IV of 1887, was made applicable to Kutch. Clause 4 of the order provided that the Act applied by the order shall be construed as if references thereunder to the authorities and territories were references to the authorities and territories of Kutch as set out in that clause. The Supreme Court held that the words "shall be construed as" meant "shall be read as" and consequently, wherever in the Bombay Act the words "Provincial Government" or "Government" were used, they had to be read as the Chief Commissioner of Kutch and the words "Province" or "Presidency of Bombay" as Kutch or any part thereof. So understood, S. 1 of the Bombay Act as applied to Kutch provided that all or any of the provisions of that Act may be extended from time to time by the Chief Commissioner of Kutch by an order published in the official Gazette to any local area in Kutch or any part thereof. The Court also held that the contention that the Bombay Act had been validity extended to and was in force in the whole of Kutch because of the Kutch (Application of Laws) Order, 1949, was not sound. But the true position was that the whole of the Act including the amended S. 1 became applicable to Kutch and therefore a notification was necessary before it could be brought into force in any part of Kutch. The Chief Commissioner issued a notification on 28 November 1950 bringing all the provisions of the Bombay Act into force throughout the whole of Kutch with immediate effect. The Chief Commissioner of Kutch under S. 1 of the Bombay Act had power to issue the notification making that Act operative in Kutch or in any part of Kutch and those powers were not affected by Art. 239 of the Constitution. The notification was valid and the Act came into force in parts of the State to which the notification made it applicable.

30. The simple answer to this contention is that it proceeds on a fallacious assumption that the scheme of the Bombay Industrial Relations Act in so far as its provisions as to its applicability are concerned is the same as that of the Bombay Industrial Disputes Act. As already pointed out, under S. 2(1) of the Bombay Industrial Disputes Act, Ss. 1 and 2 only were extended to the Province of Bombay while the rest of the provisions of the Act could be made applicable and brought into force as and when the Provincial Government issued a notification applying all or any of the provisions of the Act to such areas and to

such industries as specified in such notification. This was deliberately done for the reasons already set out and because this was the very first measure of its kind in this country and therefore the legislature thought it expedient to leave the question of application of the Act to the Government as to when and where the provisions of the Act should be applied and brought into force. That was not the position in 1946 when the Bombay Industrial Relations Act was enacted as nearly eight years had gone by since Industrial legislation was undertaken and experience had been gained. Therefore, when the legislature enacted S. 2, it introduced Sub-secs. (3) and (4) therein, making a distinction between industries to and the areas in which the Bombay Industrial Disputes Act was in force and all or any other industries and areas. So far as the former were concerned, the Act was made automatically applicable on the Government specifying the date by a notification and as regards the rest, the Act was to become applicable on the Government issuing a notification under S. 2(4). But relying on the Bombay decision referred to above, Sri Patwari argued that as S. 73A was enacted in 1953 it could come into force only after a notification to that purpose was issued. But that again would be misreading S. 2 of the Act because S. 73A, though passed in 1953, has to be read as part of the main Act and since the entire Act came into force on 29 September 1947 when the notification under S. 2(1) was issued and under S. 2(3) it applied automatically to areas and industries to which the Bombay Industrial Disputes Act was operative, there was no need of a notification bringing into force S. 73A. The two decisions cited by Sri Patwari are not applicable because the Schemes of the two enactments were akin to the Bombay Industrial Disputes Act, 1938, and not to the Bombay Industrial Relations Act, 1946. Section 38A of the Central Provinces and Berar Industrial Dispute Settlement Act could not come into force as under S. 1(3) it requires a notification. The same was the position in the Kutch case in *The State of Bombay Vs. Salat Pragji Karamsi*, . That is not so in the case of the Bombay Industrial Relations Act by reason of Ss. 2(1) and 2(3). We may also point out that in *Rashtriya Mill Mazdoor Sangh, Nagpur Vs. State Industrial Court, Nagpur*, a Division Bench of the High Court of Bombay, while dealing with S. 7A, inserted in that same Act by Madhya Pradesh Industrial Disputes Settlement (Amendment) Act, 1955, questioned the correctness of the reasoning in the cases in 1958 I.C.R. 938 on the ground that the learned Judges there had not considered two aspects, viz.,

(1) that the amending Act, 1955, did not specify the date on which it was to come into force, and

(2) that the provisions enacting the amending Act could not become part of the parent Act till the amending Act came into force.

31. The learned Judges who decided the case of *Rashtriya Mill Mazdoor Sangh, Nagpur Vs. State Industrial Court, Nagpur*, held that since the amending Act which inserted S. 7A in the Act did not provide for the date when it was to come into force, under S. 3(1) of the Central Provinces and Berar General Clauses Act

it would come into force on 25 November 1955 when after it received the President's assent it was published. Since it came into force on the date there was no need whatever to issue a notification under S. 1(3). The restraints imposed by S. 1(3) were intended to apply to the provisions of the main Act enacted in 1947. It was open to the legislature to extend those restrictions even to the provisions of the amending Act but the legislature did not do so and therefore there was no necessity of a notification to bring into force S. 7A. The learned Judges there observed that where an Act is amended by another Act the provisions of the amending Act, no doubt, become part of the parent Act but that would not mean that the amending Act does not come into force except by following the procedure laid down in the parent Act for bringing it into force. The amending Act cannot become part of the parent Act without the amending Act coming into operation but once it comes into operation, the issue of a notification would become in any event redundant.

32. With respect, we agree with the reasoning in this decision and we may also add that as laid down in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, , the rule of construction is that when a subsequent Act amends an earlier one in such a way as to incorporate itself into the earlier Act, then the earlier Act must be read and construed as if the altered words had been written in the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all but that does not mean that the amending Act becomes part and parcel of the earlier Act so that it is deemed to be in force at the date when the earlier Act came into force. It comes into force when it is enacted, for otherwise it would be giving to it indirectly retrospective effect though not intended by the legislature. This position was made clear in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, . It is true that whenever an amended Act has to be applied subsequent to the date of the amendment, various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act is, whether, it is in the unamended part or in the amended part. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication. Where one is not concerned with the meaning of any particular phrases or provision of the Act after the amendment but the effect of the amending provisions in their relation to the other statutory provisions outside the Act, the amendment cannot obviously be treated as having been part of the original Act itself so as to enable the doctrine to be called in aid that a later Act overrides an earlier Act.

33. The result of this discussion, therefore, is that though S. 73A became part and parcel of the parent Act, it was not as if it could not and did not come into force without a notification. Since the amending Act which inserted it in the

parent Act did not require any such notification and further since it did not specify the date when it would come into force, the amending Act came into operation as from the date it was gazetted and from that date has to be read as part of the Act. The reference therefore has to be held as maintainable.

34. Sri Patwari then argued that even if it is held that the Bombay Industrial Relations Act applied to the cotton textile industry by reason of S. 2(3) thereof, that Act itself became void in the absence of a fresh assent of the President for it in view of the amendments made from time to time in the Industrial Disputes Act, 1947, and, in particular, those in 1951 and 1956. The argument was that both the Acts were enacted under item 29 of Part II in List 3 of the Constitution Act of 1935, that both of them dealt with trade unions and industrial and labour disputes as is clear from the preambles of the two Acts which state that they were enacted for the regulation of relations between the employers and the employees and the settlement of industrial disputes. He relied on the latter part of S. 107(2) of the Constitution Act of 1935 and argued that though the Bombay Industrial Relations Act was reserved for assent and had received the assent of the Governor-General and would, therefore, prevail in the Province of Bombay as against the Central Act the Central Legislature having passed several amending Acts amending that Act, the Central Act would prevail as from the dates when the amending Acts came into force and the Bombay Industrial Relations Act, therefore, would be void unless every time the Acts amending the Industrial Disputes Act were enacted a fresh assent was obtained. As an additional argument, Sri Patwari pointed out that when Act 48 of 1950 was enacted, the original S. 1(2) was substituted and the amended Sub-section (2) was made applicable to the whole of India except Jammu and Kashmir and later on by Act XXXVI of 1956 that sub-section was again substituted by the present Sub-section (2) of S. 1 under which the Act would extend to the whole of India. He even went to the length of contending that when S. 1(2) was thus substituted by the new sub-section first in 1950 and again in 1956, since the sub-section dealt with the applicability of the Act, the entire Act must be deemed to have been impliedly repealed and re-enacted in its entirety and that being so, it would prevail over the Bombay Industrial Relations Act and the latter Act must therefore be held to be void. For this conclusion, he relied on the decision in *Zaverbhai Amaldas Vs. The State of Bombay*, and the observations made at p. 758, viz. -

"that on a question under Art. 254(1) where an Act of Parliament prevails against a law of the State, no question of repeal arises : but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier as repealed by the later enactment will be equally applicable to a question under Art. 254(2) where the further legislation taken by Parliament is in respect of the same matter as that of the State law."

35. Therefore, it was argued, the Bombay Industrial Relations Act, though an Act later than the Industrial Disputes Act, the amending Acts were further legislation

by Parliament and therefore the Bombay Industrial Relations Act, which would otherwise have prevailed, became void by reason of the aforesaid further legislation on the principle in *Zaverbhai Amaldas Vs. The State of Bombay*, . The argument however assumes that the amending Acts dealt with the same subject-matter covered by the Bombay Industrial Relations Act. As earlier explained, the amending Acts provided for the constitution of an Appellate Tribunal but recognized at the same time the Court, board or authority constituted under the State laws and provided in addition methods and periods by and during which payments to be made by an employer under an award or decision could be recovered. In other words, far from being in conflict with the Bombay Industrial Relations Act, or covering the field occupied by the State Act, the provisions of these amending Acts seem to complement and supplement the provisions of the Bombay Industrial Relations Act. That being so, it is difficult to appreciate how Sri Patwari can bring to his aid the decision in *Zaverbhai Amaldas Vs. The State of Bombay*, . Secondly, there is nothing in S. 107(2) of the Government of India Act, 1935, or Art. 254(2) of the Constitution which would justify the contention that though a State law may have been competently passed, the enactment of an amending Act amending a Central Act passed earlier than the State law would necessitate for the validity of such a State Act a fresh assent. Thirdly, there is no warrant for Sri Patwari's contention that when S. 1(2) of the Industrial Disputes Act was amended first in 1950 and then in 1956 substituting the original sub-section by a new one, the sub-section being one dealing with the applicability of the Act, the whole of the Act must be deemed to have been re-enacted and, therefore, became an Act later in point of time than the Bombay Industrial Relations Act, and therefore must be deemed to have impliedly repealed the Bombay Industrial Relations Act. When a legislature amends an Act, it may follow any one of the numerous methods of amendment. Sometimes, it may adopt the method of deletion of certain words or sentences or it may add to or alter the words which it wants to amend. Sometimes, when it thinks expedient, it may substitute one provision by new one, where it feels expedient to do so. But these are different methods of amendment, and substitution of one provision by another does not mean that the whole of the Act is re-enacted impliedly repealing the original Act. Section 34 of the amending Act of 1950 itself states that Sub-section (2) of S. 1 of the original Act was amended by substituting the original provision for the new one. What the amending Acts in 1950 and 1956 did was simply to extend the territorial limits of the application of the Act without touching the other provisions of the Act. There is therefore no justification in the contention that because that sub-section dealt with the extension of the Act, the Act must be deemed to have been re-enacted and that for that reason a fresh assent for the Bombay Industrial Relations Act was necessary or that without which the Act would be void.

36. The next contention that the amendments in the items as to leave in Sch. II of the Bombay Industrial Relations Act are unconstitutional and void on the ground of excessive delegation of legislative power does not survive in view of

this court's decision in Special Civil Application No. 948 of 1960 decided on 5 February 1964.

37. A further contention raised on behalf of the petitioners was that S. 73A of the Bombay Industrial Relations Act is unconstitutional by reason of

(a) its being discriminatory and violative of Art. 14, and

(b) being repugnant to the Industrial Disputes Act, 1947.

38. It was argued that the section is discriminatory, because it confers a right to refer to the industrial court an industrial dispute to a registered union and confers no such right on an employer or an association of employers. Such a right given to a union only is in breach of the right of equal protection of law. In order to reinforce his argument, Sri Patwari drew our attention to S. 38A of the Central Provinces and Berar Industrial Dispute Settlement Act, 1947, whereunder such a right of reference is granted to both the employers and the employees. It will be seen from the terms of S. 73A that though the right of reference is given to a union, it is only that union which is registered under Chap. III of the Act and which is also an approved union under Chap. IV which is given this right. The right furthermore is hedged round with certain conditions, viz, that completion of proceedings before the conciliator or where the employer has offered in writing before the conciliator to submit the dispute to arbitration under this Act and the union has not agreed to do so or unless the dispute is first submitted to the conciliator and the conciliation proceedings are completed or the conciliator has certified that the dispute is not capable of being settled by conciliation. Such a dispute also cannot be referred to the industrial court where it is required by the Act to be referred to the labour court for its decision. We fail also to appreciate how the section can be said to be discriminatory because an employer and an employee cannot be said to be similarly situated and Art. 14 can only apply to classification in the case of persons similarly situated. That the employers and employees are not similarly situated is a fact which is so well-recognized that both the Central and the State Legislatures had to enact various provisions recognizing thereunder the necessity of preserving the right of collective bargaining of employees through registered unions as a protective measure. Even assuming that the section results in discrimination, the classification must be held to be based on a rational basis and having reasonable nexus with the object for which the Act is passed, such object being the regulation of relations between employers and employees and the settlement of industrial dispute between them. Under the Act various industrial matters are classified in Schs. I, II and III of the Act. Chapter VII deals with changes in these industrial matters and S. 46, though dealing with illegal changes, recognizes the right of unilaterally making a change even in standing orders settled under Chap. VII by an employer, provided that he follows the procedure prescribed therefore in the Act. Sub-section (2) of S. 46 lays down that no employer shall make any change in any matter set out in Sch. II before giving notice under S. 42(1) or within the period giving provided for in S. 44(1) unless an agreement is arrived at or where

no such agreement is arrived at before the completion of conciliation proceedings and during ten days thereafter or where no such settlement is arrived at after two months from the date of completion of proceedings before the conciliator, etc. under Cls. (ii) and (iii) of Sub-section (2) of this section, therefore, an employer can make a change provided that it is not made contrary to the provisions thereunder, i.e., where no agreement is arrived at, after the completion of conciliation proceedings and ten days thereafter and under Clause (iii) where no settlement is arrived at within two months from the date of completion of the proceedings before the conciliator. An employer can effect changes under this section unilaterally so long as they are not illegal changes under S. 46. It would seem that S. 73A was inserted in the Act with the object of providing a machinery to resolve a dispute that may arise in case of such change or arising therefrom instead of driving the employees to such a drastic step as a strike. It is true that S. 38A of the Central Provinces and Berar Act relied on by Sri Patwari gives a right of reference to both the employers and employees but the scheme of that Act is somewhat different from the Act before us, for under S. 37(1) of that Act an employer cannot effect unilaterally a change which he can make under the Bombay Industrial Relations Act under the circumstances set out above. In any event, in view of the fact that the employers and employees are not persons similarly situated and in view of the fact that the right to refer is conferred on a union clearly with the object of avoiding such calamities as a strike and to prevent bitterness between the two classes, it is difficult to hold that the section is violative of Art. 14. As regards repugnancy, Sri Patwari was not able to point out any provision in the Industrial Disputes Act which can be said to be in conflict or inconsistent with the provisions of S. 73A so that S. 73A and any such provision in the Central Act cannot co-exist.

39. Perhaps the weakest argument advanced by Sri Patwari was the one regarding the repugnancy of the provisions as to leave with wages in the Bombay Industrial Relations Act and those in the Factories Act, 1948. The Factories Act came in force on 1 April 1949. Chapter VIII of that Act deals with annual leave and wages. Section 79 in that chapter provides that every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for the number of days to be calculated at the rate provided therein. Section 80 provides for payment of wages to the worker during the leave period at the rates provided therein and S. 81 provides for payments in advance in certain cases. The argument was that since the Factories Act and the Bombay Industrial Relations Act both have provisions with regard to leave, they cannot co-exist without a conflict arising between them and as the Factories Act is a Central Act and applies to all the factories in the country, it must prevail over the State law to the extent that the latter make provision on the subject of leave. Sri Patwari pointed out that as Chap. VIII in the Factories Act substituted the original Chap. VIII by S. 20 of the Factories (Amendment) Act, 1954, it would be Art. 254(2) of the Constitution and not S. 107(2) of the Constitution Act, 1935, which would apply

and the provisions relating to leave in the Bombay Industrial Relations Act would be repugnant and therefore void. This contention cannot be sustained for a number of reasons. In the first place, the objects of the Acts are different. The object of the Factories Act is to regulate labour in factories while the object of the Bombay Industrial Relations Act is to regulate relations between the employers and the employees and to make provisions for the settlement of industrial disputes between them. Secondly, the expression "worker" in the Factories Act has a limited meaning in the sense that a worker thereunder means a person employed in any manufacturing process or in cleaning any part of the machinery or premises used for manufacturing process or in any other work, incidental to or connected with the manufacturing process or the subject of the manufacturing process. An employee on the other hand under the Bombay Industrial Relations Act means any person employed to do any skilled or unskilled work in any industry and includes a person employed by a contractor to do any work for him in execution of a contract with an employer and a person who has been discharged or dismissed from employment on account of any dispute relating to a charge in respect of which a notice is given or an application is made under S. 42. Similarly, the word "factory" under the Factories Act carries a limited meaning as compared to an industry within the meaning of the Bombay Industrial Relations Act, for whereas a factory means premises where ten or more workers are working, and in any part of which a manufacturing process is being carried on or where twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on, industry means any business, trade, manufacture or undertaking or calling of employers and any calling, services, employment, handicraft or industrial occupation or avocation of employee. Obviously, an industry and an employee under the Bombay Industrial Relations Act have wider connotation than a factory and a worker under the Factories Act. Thirdly, the two Acts are enacted under different entries, the Factories Act under entry 26 and the Bombay Industrial Relations Act under entry 29 in Part II of List III in the Seventh Schedule of the Constitution Act, 1935. Fourthly, the schemes of the two Acts clearly show that whereas the Factories Act was enacted to ensure the health and the basic conditions in which workers have to work such as provisions as to their health, safety, welfare, working hours, etc., the Bombay Industrial Relations Act does not deal with these matters but deals with those matters which are conducive to bringing about harmony in relations between the employees and the employers and was enacted primarily to set up machinery to bring about settlement of industrial disputes. It is also clear from S. 78 of the Factories Act that though Chap. VIII deals with the subjects of leave, there is no conflict between those provisions and those in the Bombay Industrial Relations Act, for S. 78 itself provides that the provisions of Chap VIII are not to operate to the prejudice of any right to which a worker may be entitled to under any other law or under the terms of any award, agreement or contract of service. This provision clearly contemplates another law including a State law whereunder a worker might have obtained a right as to leave wider than the one provided in

this chapter and expressly saves such a right. Section 79 of the Factories Act provides for a minimum leave and not a maximum or standardized leave as construed in *Alembic Chemical Works Co. Ltd. Vs. The Workmen*, leaving scope for workers to demand a change in respect thereof under the provisions of Acts such as the Bombay Industrial Relations Act. For these reasons, it is clear that there is no repugnancy between the two Acts as they occupy different fields and deal with different and separate subjects.

40. The last contention urged on behalf of the petitioners was that the reference under S. 73A was barred by reason of certain recommendations made by the wage board appointed by the Central Government for the cotton textile industry in its report dated 27 November 1959. The contention arises in the following manner : In Reference No. 18 of 1947 between the present petitioner-association and respondent 3 association reported in 1948 I.C.R. 147, which arose as a result of a notice of change dated 27 December 1946 whereunder a demand inter alia was made for the fixation of minimum wages, the industrial court held, after taking into consideration the average cost of living and other relevant factors, Rs. 28 per month with 26 working days in a month of thirty days as minimum wages for employees in the textile industry in Ahmedabad. Sri Patwari drew our attention to pp. 152-153 of the report where certain figures of estimated gross profits inclusive of depreciation, figures of cost of holidays with pay, sickness, insurance, agent's commission and dividend at six per cent with the net balance of profits left to the industry were given by both sides, presumably to assist the Court to arrive at the figures of minimum wages after taking into account the total financial burden which the industry would have to bear. The cost of holidays with pay was Rs. 0.20 crore according to the Textile Labour Association, while the figure estimated by the Mill Industries' Association for that item was Rs. 0.35 crore. These figures were relied on by Sri Patwari to show that the cost of holidays with pay was taken into account by the industrial court while fixing the minimum wages for the industry. His contention, therefore, was that if the demand for leave with wages were to be granted, the industry would obviously have to bear a larger burden and the structure of minimum wages founded on the extent of burden the industry could bear would be radically altered. He then pointed out that the Government had thereafter appointed a wage board which recommended an ad hoc increase of Rs. 8 per month to every employee in the industry in Ahmedabad out of which Rs. 6 were payable in 1960 and the balance of Rs. 2 as from 1 January 1962. While recommending these figures, the board in Para. 101 of its report suggested that for a period of five years from 1 January 1960 no claim for further revision of minimum wages should be made by either the employers or the workmen. On 24 May 1960, the two associations entered into an agreement implementing there by the recommendations of the wage board, and it is important to note that they endorsed in Para. 4 of the agreement the suggestion of the board contained in Paras. 100 to 103 of its report. An application was thereafter made to the industrial court by the Textile Labour Association for modification of the aforesaid

award dated 21 April 1948 for increasing the minimum wages in consonance with the wage board's recommendations. The award was accordingly modified and to the award so modified on 8 June 1960 was annexed the said agreement. The contention of Sri Patwari was that the minimum wages having been increased by adding to them the ad hoc increase of Rs. 8 per employee per month, the respondent-association was barred from making a demand for a change therein for a period of five years from 1 January 1960 and therefore the reference was premature and barred by the said agreement and the award which modified the original award. He argued that if leave with wages were allowed, it would mean an increase not only in the burden on the industry but would also mean indirectly an increase in the minimum wages payable at present, for, instead of the present minimum wages based on the footing of 26 working days in a month, an employee would get the same minimum wages for a lesser number of working days in a month.

41. He relied particularly on the annexure to the 1948 award reported in 1948 I.C.R. 147 at 167, where a hope is expressed that

"The wages and earnings in this list for 26 working days and proportionate increase or decrease should be made if the working days in a calendar month are more or less than 26."

42. He also relied on *Gajanand Mahadev Vs. David Mills Ltd. and Others*, but that decision deals with an entirely different question and has nothing to do with the question arising before us. It would be needless to emphasize that the award of 1948 and its modification dealt with the question of fixation of minimum wages. The only thing that the wage board recommended was that in order to stabilize industrial harmony, neither party should make a demand to revise the minimum wages for a period of five years. The question that arises, therefore is for a revision of minimum wages as fixed by the industrial court and modified by its aforesaid order in 1960. It may perhaps be true that if the demand made in the reference were to be accepted, an additional burden will have to be borne by the textile industry and an employee would get the same wages though by being entitled to obtain leave with wages he would be working for a lesser number of days than 26 working days in a calendar month. But can this demand be said to be one relating to a revision of minimum wages ? It is only if it is so that the respondent association would be precluded from giving a notice of change under the award as modified in 1960. The first thing that we have got to observe is that in Sch. II in the Bombay Industrial Relations Act, there are two separate and distinct items, item 9 dealing with wages including the period and mode of payment, and item 11 dealing with "all matters pertaining to leave and holidays other than those specified in items 6 and 7 in Sch. I." Items 6 and 7 in Sch. I relate to the procedure and authority to grant leave and the procedure and authority to grant holidays. Prima facie, therefore, it would seem that the two items of minimum wages and leave, though the latter might affect the former, are two separate items and should not be mixed up. As stated earlier, grant of

the present demand might affect the structure of minimum wages fixed as they are on the basis of 26 working days in a month and might throw an additional burden on the industry. But that would (sic) mean that a demand for leave with wages would be the same as a demand for increase in the minimum wages. It is too clear that the demand is for leave with wages and not for an increase of the minimum wages, though it would result in an extra burden on the industry. That being so, the industrial court could not have rejected the reference in limine on the ground it was premature or barred by the recommendations of the wage board or by the award as modified in 1960. It will be a question of the industrial court while hearing the reference on merits to decide whether in view of the award of 1948 and the hope expressed in the aforesaid annexure the demand for a change should be granted or not and if granted, to what extent. In the second place, can this demand be called as demand for an increase in the wages as defined by the Act, for, if it is so then only Sri Patwari's contention can be said to have merit. Wages are defined in S. 3(39) of the Bombay Industrial Relation Act mean remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes

- (i) any bonus, allowance (including dearness allowance), reward or additional remuneration,
- (ii) value any house accommodation, light, water, medical attendance or other amenity or service,
- (iii) any contribution by employer to any pension or provident fund,
- (iv) any travelling allowance or the value of any travelling concession,
- (v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment, and
- (vi) any gratuity payable on discharge.

43. Grant of leave with wages would mean that if an employee is given leave, there should be no deduction for the leave period from the wages packet he would be entitled to on the basis of minimum wages payable to him. Such a demand that there should not be a cut from his wages is not a demand in any event for an increase in the minimum wages. At best, it would mean that the employer would get less work than he would otherwise obtain as there would be lesser number of working days in that particular calendar month. Such a demand would also not be a demand for remuneration or bonus or allowance or reward or additional remuneration. Nor would it fall under any of the remaining sub-clauses of Clause (39) of S. 3. It may perhaps be an amenity but not the amenity mentioned in Sub-clause (2) for the word "amenity" there must be construed ejusdem generis, and if so construed, the present demand would not fall in the class of amenities set out in that sub-clause. The reference is for leave with wages, a concession which cannot be treated as a demand for revision of the

minimum wages fixed by the award as modified in 1960. That being so, Sri Patwari's argument cannot be acceded to.

44. For the reasons stated hereinabove, none of the contentions raised by the petitioners can be sustained and the other passed by the industrial court rejecting the petitioners' preliminary pleas was correct. The petition, therefore, has to be rejected. Rule discharged with costs. Costs fixed at Rs. 2,000.

45. Sri Patwari at this applies for leave to appeal to Supreme court. The learned Advocate-General states that he has no objection to the leave being granted. Leave granted under Art. 133(1)(c) of the Constitution.

46. The order not to be executed for a fortnight from today.