
(1992) 01 RAJ CK 0034
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 141 of 1991

G.M., Lake Palace Hotel and Others

APPELLANT

Vs

Ranjit Singh

RESPONDENT

Date of Decision : 17-01-1992

Acts Referred:

Constitution of India, 1950 — Article 254(2)

Industrial Disputes Act, 1947 — Section 2(5)

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 2(5), 28A

Citation : (1993) 2 LLJ 1098 : (1992) 1 RLW 317 : (1992) 3 WLC 96 : (1992) 1 WLN 541

Hon'ble Judges : Rajesh Balia, J; Milap Chandra Jain, J

Bench : Division Bench

Advocate : C.N. Sharma and K.N. Joshi, for the Appellant; M. Mridul, for the Respondent

Final Decision : Dismissed

Judgement

Balia, J.—This Special Appeal arises out of the order passed by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 3611/1988 on 25th January 1991 reported in 1992 2 CLT 552.

2. Brief facts giving rise to this appeal are that Lake Palace Hotel and Motel (Pvt.) Ltd., Udaipur owns the Lake Palace Hotel situated at Udaipur. Respondent Ranjit Singh was employed as Steward-cum-Dining Supervisor in the services of the above named Hotel drawing a monthly salary of Rs. 926.85 when his services were terminated by order dated 13th August, 1983. Aggrieved with the termination order, the respondent approached prescribed Authority under the Rajasthan Shops and Commercial Establishments Act., Udaipur by making a complaint in writing in the prescribed manner u/s 28A of the Rajasthan Shops and Commercial Establishments Act, 1958, hereinafter called as "the Shop Act". A preliminary objection was raised before the Prescribed Authority about its jurisdiction to entertain the complaint on behalf of the respondent Ranjit Singh

on the ground that the term "employee" u/s 2(5) of the Shop Act has the same meaning as the term "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947, hereinafter referred to as "the Central Act" and any employee who does not fall within the definition of workman under the Central Act is not entitled to invoke provisions of the Shop Act also. It was contended that since respondent Ranjit Singh was working in supervisory post and drawing salary exceeding Rs. 500/- he was not a workman within the meaning of the Central Act, he does not come within the purview of the term "employee" also under the Shop Act. Therefore, the prescribed Authority under the Shop Act has no jurisdiction to entertain the complaint. This objection found favour with the Prescribed Authority and the complaint was dismissed by the Prescribed Authority on March 30, 1988. The order of the Prescribed Authority was challenged by way of above mentioned writ petition. The learned Single Judge of this Court vide his order under appeal set aside the order of the Prescribed Authority and directed the Authority to proceed with the matter and decide the complaint in accordance with law. Hence this appeal.

3. It is contended by Mr. C.N. Sharma, learned counsel appearing for the appellants that the definition of employee u/s (2)5 of the Shop Act does not include any employee who does not fall within the definition of workman as defined in Section 2(s) of the Central Act. If for any reason, the term "employee" under the Shop Act is interpreted to include even those employees who do not fall within the definition of the workman under the Central Act then to that extent, the provisions of the Shop Act, which is an Act of State Legislature, are repugnant to the provisions of the Central Act, an Act of Parliament, therefore, the provisions of State Legislation must give way to the Central Legislation in view of the provisions of Article 254 of the Constitution of India.

4. Firstly, it was contended by Mr. C.N. Sharma, learned counsel for the appellants that the Shop Act is only supplemental to the Central Act and does not override the provisions of the aforesaid Central Act. According to him, the Shop Act provides merely another forum as an alternative to one provided under the Central Act for settling the industrial disputes relating to dismissal or discharge from employment of any employee. As the Central as well as the Shop Act occupy the same field of the legislation, the subject over which the two Acts operate must necessarily be identical. Therefore, it is submitted that only those persons who can properly come within the definition of workman under the Central Act can be made subject of operation of the Shop Act providing forum for redressal of grievances against dismissal or discharge. Viewed from this point of view, the term "employee" used in the Shop Act should be read as being limited to the scope of the term "workman" as defined u/s 2(s) of the Central Act.

5. In order to appreciate the contention raised by the learned counsel for the appellants, it would be profitable to reproduce the relevant provisions of the two Acts.

6. The Central Act which has been enacted to make the provisions for

investigation and settlement of industrial disputes and for certain other purposes, defines terms "industry" "industrial disputes" and "workman" as under:-

7. Section 2(j) defines "industry" as under:-

"Industry" means any business, trade, undertaking manufacture or calling of employers and includes any calling, service employment, handicraft, or industrial occupation or avocation of workman".

8. Section 2(k) defines "industrial dispute" as under:

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

Section 2(s) defines "workman" as under:-

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

9. It may be stated for the present purposes that Chapter V - A of the Central Act deals with the lay-off and retrenchment. u/s 25J of the Central Act, which reads as under, gives an overriding effect over other laws provided the provisions of other laws in respect of any matter provided under this Chapter are not more favourable to workman:-

Section 25J. Effect of laws inconsistent with this Chapter :

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of

1946).

Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force : in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

10. A reading of the aforesaid provisions leaves no room of doubt that the provisions of the Central Act for settling the industrial disputes are confined to settle dispute or differences between the employers and employees, or between the employers and workmen or between workmen and workmen. The definition of workman makes it abundantly clear that class of persons to which the Central Act apply does not include the whole host of employees under an employer but is confined only to such class of employees who conform to the term "workman" defined u/s 2(s) of the Central Act. Chapter V-A with its overriding effect u/s 25J is also confined to those class of persons who conform to the definition of the workman under the Central Act and the provisions of the Act do not enure for the benefit of whole host of employees working under an employer in an industry. It may also be noticed that the Central Act does not define the term "establishment" but defines only "industry" which has been given widest possible interpretation by the Apex Court of our land to include every form of activity where relations of master and servant exist except activities in exercise of sovereign power. Thus, notwithstanding the wide meaning given to the term "industry" its application is not made operative on the entire class of employees in an industry/industrial establishment but is confined only to those class of employees who conform to the definition of term "workman" under the Central Act. Against the aforesaid backdrop of the Central Act, the relevant provisions of the Shops Act are reproduced hereinbelow.

11. Section 2(3) defines "Commercial Establishment" as under:-

"Commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, a hotel, a restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes every such establishment as the State Government may, by notification in the Official

Gazette, declare to be a commercial establishment for the purposes of this Act".

Section 2(5) defines "employee" as under:-

"Employee" means a person wholly or principally employed in or in connection with any establishment and includes an apprentice but does not include a member of the employer's family; it also includes any clerical or other staff of a factory or industrial establishment who falls outside the purview of the Factories Act, 1948 (Central Act LXIII of 1948)"

12. Section 2(7) defines "establishment" as under:-

"Establishment" means a shop or a commercial establishment"

Section 2(17) defines "Shop" as under"

"Shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes officers, store-rooms, godowns or ware-houses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act 1948 (Central Act LXIII of 1948)"

13. Section 28 A which puts restriction on uninhibited dismissal or discharge by the employer and provide machinery for redressal reads as under:-

"28-A Notice of dismissal or discharge by employer:-

(1) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee atleast one month's prior notice or on paying him one month's wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.

(2) Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely-

(a) that there was no reasonable cause for dispensing with his services; or

(b) that no notice was served upon him as required by sub-section (1); or

(c) that he had not been guilty of any misconduct:

Provided that the prescribed authority may condone delay in filing such a

complaint, if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

(3) The prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefor.

(4) While passing an order under sub-section (3), the prescribed authority shall have power to give relief to the employee by way of reinstatement or by awarding money compensation or by both.

(5) The decision ,of the prescribed authority under this section shall be final and binding both on the employer and the employee."

14. Section 37 of the Shops Act saves rights and privileges which an employee in any establishment is entitled to under any other law, if such rights or privileges are more favourable to him than those to which he will be entitled under this Act.

15. A reading of the scheme of the Shops Act leads us to opine that the scope of establishment governed under the Shops Act is confined to "shops" and "Commercial Establishment" as defined u/s 2(3) and 2(17) respectively under the Shops Act. The reading of these provisions of the Act as such are not applicable to the employees of the factory as defined under the Factories Act where manufacturing process is carried out or other activities incidental to such manufacturing are undertaken and the provisions are also not applicable to an industrial establishment within the wide scope of the Central Act but are confined to the "commercial establishment" and "shop" as defined under the Shops Act. However, it is also clear that once a shop comes within the purview of commercial establishment or shop, as the case may be, as defined under the Shops Act, the benefits of the provisions of the Shops Act enure for all employees of such establishment irrespective of their class, nature of work or the amount of the salary or wages earned by such employees.

16. The definition of "employees" in the aforesaid scheme leaves no room for speculation about the clear intent of the subjects sought to be covered under the Act. While the entire host of employees of an establishment who conform to the commercial establishment or shops under the Shops Act are covered under the first limb of the definition, the second part of the definition which commences with the words "it also includes" give a clear indication that the later part of the Section 2(5) is intended to extend the coverage by including such other persons in addition to those already covered by first limb viz. clerical or other staff of the factory or industrial establishment which is not otherwise covered under the definition of "commercial establishment" and "shops" and that too only in case if such employee falls outside the purview of the provisions of the Factories Act.

17. The appellants own a hotel which comes within the definition of term "commercial establishment" u/s 2(3). The respondent Ranjit Slingh was a person

wholly and principally employed in the said hotel in connection with its business. Hotel has been specifically included in the definition of the commercial establishment. The person employed at a hotel falls within the purview of employee u/s 2(5) as a person wholly or principally employed in or in connection with the establishment and there is no occasion to look into the extended meaning given to the term "employee" under the later part of the provision including even those clerical or other staff of a factory or industrial establishment who fall outside the purview of the Factories Act. On the plain reading of the provisions of the Shop Act, we are of the opinion that the learned Single Judge was right in holding that respondent fell within the definition of "employee" under the Shop Act."

18. Merely because the Central Act also exists occupying the same field providing for remedies against dismissal and discharge from employment of persons classified as a workman, does not lead to any inference that the State Legislation in the same field is confined to cover only that class of persons which are covered by the Central Act and does not by necessity cover even those who are left out of the purview of the Central Legislation. As a matter of fact, as we have briefly stated hereinabove, the Central Act is not an exhaustive piece of legislation on the subject to be termed as occupying the entire field. The very fact that the term "workman" has been defined narrowly by not including the whole host of employees, employed under an industrial establishment and the provisions relating to settlement of disputes are confined only to providing remedies for settling disputes between the employers and employees, employers and workmen and workmen and workmen goes to show that the provisions of the Central Act are not exhaustive enough to cover the entire field of legislation, regarding the settlement of industrial disputes. Thus, we are firmly of the opinion that while interpreting the provisions of the Shop Act, the scope and ambit of the term "employee" has to be determined in accordance with the plain language used in the Shop Act. The scope and ambit of the Shop Act cannot be construed as limited to and co-extensive with the scope and ambit of the Central Act by incorporating the definition of workman used in the Central Act. It may also be noticed that while the Central Act does not incorporate any definition of "industrial establishment" or "employee" but only defines the term "workman" regarding whose benefit, the Central Act has been enacted. The Shop Act defines both the commercial establishment and shop which are governed under the Shop Act and also the term "employee" employed under the establishment without restricting its operation to any class with reference to the nature of the work or with reference to wages. There cannot be any legitimate contention by reading the Shop Act independently that the respondent Ranjit Singh does come within the purview of employee as defined under the Shops Act.

19. In furtherance of this argument, it was also contended that hotel is not merely a commercial establishment but also an industrial establishment and, therefore, only the second part of the Section 2(5) of the Shop Act is applicable to determine the question as to who are the employees of the appellants. If the

second part is made applicable only clerical and other staff which term has been used as ejusdem generis to the word clerical included in the definition of employee. On this ground also, according to the learned counsel for the appellants, the respondent Ranjit Singh does not fall within the category of clerical or other staff because he is a supervisor. This argument is slated only to be rejected for the reasons we have already discussed hereinabove. Suffice it to state that hotel being a commercial establishment as defined u/s 2(3) of the Shop Act, the later part of Section 2(5) is not at all attracted for consideration in the present case. The later part of . Section 2(5) is only attracted in case the establishment concerned is not a commercial establishment or shop as defined under the Act and is confined to those clerical and other staff of a factory or industrial establishment which are left uncovered by the Factories Act.

20. It was next contended by the learned counsel for the appellants that if the term "employee" is interpreted in its literal sense as aforesaid, the State Legislation having been made in the field of concurrent list of the Seventh Schedule is a legislation in the same field as the Central Act is. Therefore, the provisions of Article 254 of the Constitution are attracted, because the Central Act confers right of remedy under the Central Act against dismissal and discharge of the workman only but the State Legislation goes beyond the conferment of right to remedies against dismissal and discharge, even; to those employees who do not fall in the category of the workman, to that extent, the Shop Act is repugnant to the Central Act and, therefore, it must give way to the provisions of the Central Act. Consequently, the Shop Act cannot be made operative to those employees of any establishment who do not come within the definition of workman. In support of this contention learned counsel places reliance on the following cases:-

1. National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others,
2. Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others,
3. Delhi Consumer Co-op. Wholesale Stores Ltd. v. Secretary (Labour) and etc. 1983 LIC 1952 (Delhi).

21. Having bestowed our anxious consideration on the contention raised we are of the opinion that this contention too cannot be accepted. The cases relied on by the learned counsel for the appellants are of no assistance to him. It is true that both the Shop Act and the Central Act are legislation in the same field covered by the Entry 22 of the Concurrent List of the Seventh Schedule. However, it cannot be said that there is any repugnancy between the two by applying the well known test of determining the question of repugnancy or inconsistency between the two.

22. In Ch. Tika Ramji and Ors. v. State of Uttar Pradesh and Ors. reported in 1956 -Supreme Court Reports p. 393, their Lordships of the Supreme Court stated while dealing with the scope of Article 254 of the Constitution on the

question of repugnancy as under:-

"....the test of repugnancy would be whether Parliament and the State Legislature, in legislating under an entry in the Concurrent List, exercised their powers over the same subject matter or whether the laws enacted by Parliament were intended to be exhaustive so as to cover the entire field".

23. The same principle was reiterated in *Deep Chand Vs. The State of Uttar Pradesh and Others*, wherein Subba Rao, J. spoke for the Court after reviewing the law on the subject as under:-

"Nicholas in his *Australian Constitution*, 2nd Edition, p. 303, refers to three tests of inconsistency or repugnancy:

1. There may be inconsistency in the actual terms of the competing statutes;
2. Though there may be no direct conflict, a State law may be inoperative because the Commonwealth Code is intended to be a complete exhaustive Code; and
3. Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the ; same subject matter".

24. In *Sir Fazalbhoy Currimbhoy and Others Vs. Official Trustee of Maharashtra and Others*, their Lordships have repelled the question of repugnancy between *Sir Currimbhoy Ebrahim Baronetoy (Repealing and Distribution of Trust Properties), Act (9 of 1960)* and *Administration of Evacuee Property Act* on the ground that the State Legislation on the subject and, therefore, the sub-section is not repugnant to any provision of the Central Act in following term. "However, the sub-section is not repugnant to any provision of the *Administration of Evacuee Property Act* for, it is in the nature of additional legislation on the subject".

25. This clearly goes to show that where the Central Legislation is not intended to be exhaustive on the subject so as to cover the entire field, the State Legislation is free to enact in the same field providing for additional matters.

26. Again in *M. Karunanidhi Vs. Union of India and Another*, it was held as under:-

"It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. 2 Prime facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely: irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such a

nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

27. In this connection, it may also be noticed that even in the field where both the Acts are operating simultaneously, their Lordships of the Supreme Court have found that no repugnancy exists between the two. In *National Engineering Industries Ltd.* case (supra) which dealt with the argument of repugnancy between the Shop Act in question and the Central Act, their Lordships held as under:-(pp. 368-369)

"Therefore, in order to raise a question of repugnancy two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other. These are two conditions which are required to be fulfilled. These are cumulative conditions. Therefore, these laws must tread on the same field and these must be repugnant or inconsistent with each other. In our opinion, in this case there is a good deal of justification to hold that these laws, the Industrial Disputes Act and the Rajasthan Act, tread on the same field and both laws deal with the rights of dismissed workman or employee. But these two laws are not inconsistent or repugnant to each other. The basic test of repugnancy is that if one prevails the other cannot prevail. That is not the position in this case".

28. As we have already seen above that while the Central Act is confined in its operation to the workman as defined under the Central Act, the Shop Act not only operates qua the workman but also provides relief in addition to workman to those employees who are not covered under the Central Act, therefore, the contention based on the ground of repugnancy deserves to be repelled.

29. It is also apparent that while the two Acts occupy the same field but there is room for both the Statutes operating without coming into collision with each other and, therefore, no repugnancy survives. As a matter of fact, the Shops Act while occupying the same legislative field seeks to create additional remedies in favour of all the employees of any commercial establishment or shop which may or may not exist under the Central Act. While remedies for the workman already existed under the Central Act, for those employees not corresponding to the description of the workman under the Central Act, no remedy existed under the Central Act. For them new remedies have been created under the Shop Act. In this view of our conclusions, the argument of the appellants based on the ground of repugnancy is hereby rejected.

30. It is noteworthy that in *National Engineering Industries Ltd.*'s case (supra), the concerned employee was falling within the category of workman under the Central Act and with reference to Section 37 of the Shop Act, it was held that the provisions of the Central Act which were more beneficial to the workman, were allowed to operate u/s 37 of the Shop Act. Likewise in the *Krishna Dist. Co-operative Marketing Society Ltd. Vijayawada*'s case (supra), their Lordships were

dealing with the case of A.P. Shops and Establishments Act, 1986 vis-a-vis the provisions of the Central Act. The controversy raised therein was that whether an employer whose establishment is covered by the A.P. Shops and Establishments Act was required while retrenching any workman to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947. Their Lordships observed that in view of the overriding provisions of Section 25J of the Central Act while the provisions in a State law relating to the settlement of industrial disputes, the rights and liabilities of employers and workman in so far as they relate to lay off and retrenchment shall be determined in accordance with Chapter V-A of the Central Act and Section 41(1) and Section 41(3) of the State Act prescribe alternative authorities to settle a dispute arising out of a retrenchment. Those authorities may exercise their jurisdiction under the State Act but they have to decide such dispute in accordance with the provisions of Chapter V-A of the Central Act. It was further observed by their Lordships by referring to Article 254 as under (p. 372):

"If really the State Legislature intended that it should have a law of its own regarding the rights and liabilities arising out of retrenchment, it would have expressly provided for it and submitted the Bill for the assent of the President. The State Legislature has not done so in this. Section 40 of the State Act deals with terminations of service generally. In the above situation we cannot agree with the contention based on Article 254(2) of the Constitution since it is not made out that there is any implied repugnancy between the Central Law and the State law".

31. Thus, this decision is of no assistance to the appellants. It may also be noticed that the employee concerned in the aforesaid case was also conforming to the definition of the workman given in the Central Act. Another decision of the Delhi High Court relied on by the counsel for the appellants in Delhi Consumer Co-op. Wholesale Stores Ltd. v. Secretary (Labour) and etc. reported in 1983 LIC 1952 does not advance the case of the appellants in any manner. The controversy raised before us was not at all before that Court. The only question to which the Court adverted to was that where the dispute regarding termination of services of employees of establishment registered under Delhi Shops and Establishments Act was referred to the Labour Court whether the Court could award back wages notwithstanding registration under the Shops Act. The Court held that as the employees were also governed by the Industrial Disputes Act, they should not be denied the relief under the Industrial Disputes Act and the Labour Court was competent to award reinstatement with back wages. It was held that the applicability of Shops and Establishments Act only means that if the workman is covered by the Shops Act, he may seek relief also under the said Act but this cannot debar him from seeking relief under the Industrial Disputes Act if he is entitled to the same. It was not the controversy before the Court that an employee who is entitled to seek redress under the Industrial Disputes Act at all whether he could seek relief under the Shop Act, if he legitimately comes within the ambit of its operation.

32. Thus, we do not find any force in the contention that if the plain meaning of Section 2(5) of the Shops Act is accepted, it would result in repugnancy with the Central Act in any manner.

33. Even if for the sake of the argument for the moment it be assumed that there may be room of entertaining the argument of repugnancy, still the appellants cannot succeed. Article 254 reads as under:-

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

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by Legislature of such State, or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void.

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

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

34. A careful analysis of the above provision makes it clear that the question of repugnancy arises only in connection with the subject enumerated in the concurrent list of the Seventh Schedule and ordinarily if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, then the law made by the Parliament prevails and the law made by the Legislature of a State to the extent of repugnancy is held to be void but this rule is subject to the provision of the said Clause (2) of Article 254 which provides where the later legislation of the State with respect to any of the matters enumerated in the concurrent list has been reserved for consideration of President and has received the assent then such later statute made by the State Legislature will prevail in that State. The impugned provisions of the Shop Act are fully covered by the Article 254(2). The Shop Act is a later State Act, with the impugned provisions, it has been reserved for the assent of the President and has received such assent. This conclusion is also fortified by the decision relied on by the learned counsel for the appellants himself in National Engineering Industries Ltd. case (supra) wherein it was observed as under (p. 368):-

"The Rajasthan Act received the assent of the President on 14th of July, 1958. On 8th March, 1972, Chapter 6A including Section 28A was inserted in the Rajasthan Act. Therefore, the material provision of the Rajasthan Act is the subsequent Act. Under Article 254(2) of the Constitution, if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the Concurrent List. It appears that both of these Acts tread the same field and if there was any conflict with each other, then Section 28A of Rajasthan Act would apply being a later law".

35. Thus, even in the case if there were any conflict between the Shop Act and the Central Act as far as Rajasthan State is concerned, the Shop Act would prevail.

36. In view of the above discussion, we find no force in this appeal and the same is hereby dismissed with no order as to costs.