

**(1956) 01 MP CK 0012**

**In the Madhya Pradesh High Court**

**Case No : Civil Miscellaneous Petition No. 29 of 1954**

Janardan Shridhar and Another

APPELLANT

Vs

Management Hukumchand Mills Ltd. and Others

RESPONDENT

**Date of Decision : 18-01-1956**

**Acts Referred:**

Constitution of India, 1950 — Article 19, 19(1), 227, 254, 254(2)

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 10(3), 23, 24, 27, 52(2)

**Citation : (1956) 01 MP CK 0012**

**Hon'ble Judges : Samvatsar, J;Newaskar, J**

**Bench : Division Bench**

**Advocate : Homi F. Daji and M.R. Deo, for the Appellant; G.M. Chafekar and G.M. Sohoni for No. 1, J.D. Patel, for No. 2 and K.A. Chitale, General for No. 3, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Samvatsar, J.—The Petitioners are employees working in the Sal Khata (Weaving Shed) in the Night Shift in the Hukumchand Mills Ltd., at Indore. They have filed this petition under Article 227 of the Constitution of India against an order of the Labour Court Judge at Indore.

2. The facts giving rise to this petition are that in the Hukumchand Mills Ltd., (A Mills), workers of the weaving department working in the night shift went on strike on 9-3-1954 and certain other workers of the Hukumchand Mills Ltd., (B Mills), working in the night shift in the spinning and weaving departments struck work on 10-3-1954.

3. On 11-3-1954, the Mill Company applied to the Labour Court Judge under 78(1)(a) to (c) read with Section 97 of the Bombay Industrial Relations Act for declaring these strikes illegal. The Mill Company had impleaded the Indore Mill Mazdoor Sangha which is a representative union of workers, as the opposite party to these proceedings and the union appeared in the case as representative of the employees.

4. On 13-3-1954, the Judge, Labour Court, ordered a notice to be published in some local paper under Rule 12 of the Rules framed under the Bombay Industrial Relations Act, and this notice appeared in the issue of "Jagran" a daily news paper published at Indore, on 14-3-1954.

In response to this notice the Petitioners and certain other persons applied to the Labour Court Judge for being impleaded as parties in their individual capacity. In the application they stated that they were not members of the Indore Mill Mazdoor Sangha and were not in fact represented by that association. They also alleged that the Mill Mazdoor Sangha was not conducting the case bona fide and in the general interest of the employees.

5. The learned Judge heard the parties and by his order dated 14-3-1954, rejected the prayer for impleading the Petitioners and Ors. as parties to the proceedings. The learned Judge thereafter proceeded with the inquiry and recorded evidence which was adduced by the Mill Company. The opponent did not examine any witnesses. At the conclusion of the trial the learned Labour Court Judge by his final order dated 16-3-1954, allowed the application and declared the strikes to be illegal.

6. The Petitioners have filed this petition under Article 227 of the Constitution and have challenged the validity of the proceedings and the order of the Labour Court Judge dated 16-3-1954.

7. The petition was opposed by the opponents, i.e., the Hukumchand Mills Ltd., and the Indore Mill Mazdoor Sangha. As during the course of arguments Mr. Daji, learned Counsel for the Petitioners raised the question of vires of certain provisions of the Bombay Industrial Relations Act as adapted in Madhya Bharat and its amendments, we also heard the learned Advocate-General.

8. In rejecting the Petitioners prayer for being impleaded as opponents, the learned Labour Court Judge has relied upon the provisions of Section 27A, Section 32 and the second proviso to Section 33 of the Bombay Industrial Relations Act. On the interpretation of these provisions, the learned Judge came to the conclusion that when a representative union was appearing in the case as representing the employees, no individual worker could be allowed to appear and to conduct the proceeding.

9. The Petitioners have challenged the validity of the order of the Labour Court Judge on various grounds. In their petition they have alleged:

(1) that in rejecting the Petitioners prayer, the Labour Court Judge has failed to exercise jurisdiction vested in him u/s 33 of the Bombay Industrial Relations Act;

(2) that the Labour Court Judge has acted arbitrarily in refusing to implead the Petitioners;

(3) that the proceedings were initiated by the employers against the employees in collusion with the representative union, viz., the Indore Mills Mazdoor Sangria;

that these proceedings were against the just rights of the employees and were prejudicial to their interest;

(4) that the order of the Labour Court Judge declaring the strike illegal was against natural justice as it was passed behind the back of the persons who were most vitally affected thereby.

10. On these grounds it is prayed that the order of the Labour Court Judge be quashed and set aside as being illegal, arbitrary and against natural justice.

11. On 5-4-1954, the Petitioners filed an application in which they raised the following additional points:

1. that the provisions of Section 27A, Section 30 and Section 33 of the Bombay Industrial Relations Act are void as they are repugnant to the provisions of the Industrial Disputes Act which is a parallel legislation passed by the Central Legislature;

2. that the impugned provisions are void as being in conflict with the fundamental rights guaranteed by Article 19(1)(c) of the Constitution;

3. that the provisions of Section 97 of the Bombay Industrial Relations Act are void being repugnant to the fundamental rights and the corresponding provisions of the Central Act, viz., the Industrial Disputes Act.

12. The arguments mainly centred round the points raised in the application dated 5-4-1954. The principal contentions raised by Mr. Daji are:

1. that the provisions of Section 27A, Section 30 and Section 33 of the Bombay Industrial Relations Act are void as Being in conflict with the fundamental rights guaranteed by the Constitution;

2. that the provisions of Section 27A, Section 30, Section 33 and Section 97 of the Bombay Industrial Relations Act are void being repugnant to the provisions of the Industrial Disputes Act;

3. that the order of the Labour Court Judge is against the principles of natural justice.

13. To appreciate these points properly, it is necessary to note the dates on which the relevant provisions of the Bombay Industrial Relations Act and the Industrial Disputes Act were promulgated in Madhya Bharat.

14. The Bombay Industrial Relations Act of 1947 was adapted in Madhya Bharat by Act No. 31 of 1949 and came into force on 6-5-1949. The first amendment to this Act was effected by Act No. 4 of 1952. By this amendment the provisions of Section 27A, Section 32 as it stands now, and the second proviso to Section 33 were introduced in the Bombay Industrial Relations Act. The second amendment to the Bombay Industrial Relations. Act as adapted in Madhya Bharat was made by Act No. 11 of 1953. The third amendment was effected by Act No. 32 of 1953 and came into force on 9-4-1953. The fourth and the last amendment is made by

Act No. 1 of 1955 and is dated 31st July, 1955.

15. The Industrial Disputes Act of 1947 was applied to Madhya Bharat with effect from 23-5-1950 by Act No. 48 of 1950 of the Central Legislature.

16. It would be clear from these dates that the Bombay Industrial Relations Act was adapted in Madhya Bharat in the pre-Constitution period but the amendments from 1952 onwards were made after the Constitution came into force. These amendments were therefore made after obtaining the assent of the President under Article 254(2). The Industrial Disputes Act was applied to Madhya Bharat after the Constitution came into force but before the material amendments were made to the Bombay Industrial Relations Act.

17. In its preamble it is stated that the Bombay Industrial Relations Act is enacted with a view to regulate the relations of the employers and the employees and to make provisions for settlement of industrial disputes and to provide for certain other purposes.

18. In Section 3, Sub-section (32), the expression "representative of employees" is defined to mean representative of employees entitled to act as such u/s 30. In Section 2, Sub-section, (33), "a representative union" is defined as a union for the time being registered as representative union under the Act.

19. Sections 13 and 14 provide for the registration of employees' unions. Three types of unions are contemplated: (i) a representative union in any industry having at least 15 per cent, of the total number of employees employed in any industry in any local area as its members; (ii) qualified union having at least 5 per cent, of the total number of employees employed in such industries as its members; and (iii) when there is neither a representative union nor a qualified union registered in any industry, a union having a membership of not less than 15 per cent, of the employees employed in any undertaking could apply and be registered as a primary union.

20. Then Chapter V, which includes Section 27 to 33, deals with representations of employees and employers and appearance on their behalf in proceedings under this Act. Section 27, Sub-section (2) provides for appearance by an association of employers in any proceedings under the Act. Section 27A provides for appearance by a representative union of employees and is as follows:

27A. Save as provided in Sections 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees.

21. Then there is Section 30 prescribing the order of preference as between the representatives of the employees in an industry in any local area and the union which has the most preferential right is stated to be a representative union for such industry.

22. Section 32 which is Anr. important section is as follows:

32. A conciliator, a Board, an Arbitrator, a Wage Board, a Labour Court and the Industrial Court may, if he or it considers expedient for the ends of Justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it:

Provided that no such individual shall be permitted to appear in any proceedings in which a representative union has appeared as the representative of employees.

23. Then the last material Section, viz., Section 33 deals with appearance of employees and is as follows:

33. Notwithstanding anything contained in any other provision of this Act, an employee or a representative union shall be entitled to appear through any person:

(a) in all proceedings before the Industrial Court;

(aa) ...

(b) in proceeding before a Labour Court for deciding whether a strike, lock-out, closure or stoppage or change or an order passed by an employer under the standing orders is illegal or for deciding any industrial dispute referred to it u/s 72 ;

(c) in such other proceedings as the Industrial Court may, on application made in that behalf, permit:

Provided that a legal practitioner shall not be permitted under Clause (c) to appear in any proceeding under this Act except before a Labour Court as provided in Section 83A or the Industrial Court:

Provided further that no employee shall be entitled to appear through any person in any proceeding under this Act in which a representative union has appeared as the representative of employees.

24. Further provisions in the Act relate to standing orders which regulate the normal relations of the employers and employees and the procedure which shall be followed by either party in case there is a demand for "change" particularly in regard to matters specified in schedules 2 and 3 annexed to the Act.

Then there is provision for settlement of dispute by conciliation, arbitration or by approaching the Labour Court and the Industrial Court. Chapters XII and XIII deal with the jurisdiction of these Courts. Chapter XIV deals with illegal strikes and lockouts. The later provisions relate to punishment for miscellaneous matters.

25. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the tribunals constituted under the Act, i.e., the Labour Court and the Industrial Court. It further aims at the employers and employees being represented in all these disputes through their respective unions.

Direct action by means of strikes by the employees and lockouts by the employers is not permitted until all means of peaceful settlement in the manner provided in the Act are exhausted. The Act thus essentially aims at securing industrial peace and settlement of all outstanding problems in regard to the capital and labour by peaceful methods.

26. Formation of unions is expressly recognized and there is provision in the Act for their registration. The underlying idea of the framers of the Act seems to be that so far as the employees are concerned, there should be a united stand and they should not be allowed to bargain with their employers individually, but should be required to deal through their associations.

The statutory right to represent the employees is conferred on the representative union which is a union having the largest number of employees in an industry as its members for the time being and whenever such a union appears in a proceeding as a representative of the employees, the individual employees are excluded from appearing and conducting their own cases.

27. It was urged by Mr. Daji, learned Counsel for the Petitioners, that the provisions of Sections 27A, 32 and 33 of the Bombay Industrial Relations Act are intended to determine the order of preference when an individual employee desires to be represented and do not confer upon a representative union a right to exclude him from appearing before a Court or a Tribunal on his own behalf and to conduct his own case.

It was urged that such a narrow interpretation would conflict with the provisions contained in Sections 83 and 97 of the Bombay Industrial Relations Act. It was also urged that if the provisions of these Sections were held to debar the individual concerned from participating in the proceedings vitally affecting him, they would be void as being in conflict with Article 19(1) of the Constitution.

28. The material provisions of Sections 27A, 32 and 33 have already been set out above. Section 27A and Section 33 in express terms lay down that no employee will be entitled to appear before a Labour Court and to conduct his own case when a representative union has entered appearance to represent the employees. The language used in Section 27A is most emphatic and it lays down that no employee shall be allowed to appear or to act in any proceeding under this Act except through a representative union excepting in cases covered by Sections 32 and 33.

Section 32 empowers a Labour Court to permit an individual to appear and to participate in the proceedings before it. But the proviso makes it abundantly clear that this could be done only if the representative union has not appeared in the case as the representative of the employees. Under this section an individual is not permitted to appear in any proceeding in which a representative union has appeared as representative of the employees and to the same effect is the second proviso added to Section 33 of this Act.

29. I am supported in the view I have taken by the decision of the High Court of Bombay in *Raja Kulkarni v. State of Bombay*, AIR 1951 Bom 105 (v. 38)(A). It was held in that case that the Act aims at a method of representation both on the part of capital and labour in a particular manner and where a representative is entitled to appear it is only proper that an individual employee is not allowed to appear in that proceeding.

30. The contention of Mr. Daji that this narrow interpretation would conflict with the provisions of Section 83A and Section 97 of the Act is not of much force. Section 83 deals with powers and procedure of the Labour Court in trials and Section 83A provides that a legal practitioner shall not be entitled to appear before a Labour Court except with a previous permission of that Court.

There is nothing in Section 83 or 83A which conflicts with the provisions of Section 27A or with the proviso to Section 32 or to Section 33 and the same may be said about Section 97 also. But apart from the considerations, Section 27A which was added in the year 1952 expressly takes away the right of an individual employee to claim to appear before a Labour Court and to conduct his own case. Effect must therefore be given to that provision unless it is held to be void.

31. The provisions of these sections are also in consonance with the doctrine of collective bargaining which the Act is intended to achieve and foster. If instead of the representative union appearing for all the employees the individuals concerned were allowed to appear and to act in a proceeding under the Act as they thought fit, there would be as many voices as there are Individuals and the chance of labour speaking with one voice, or taking a united stand, would disappear which again would be detrimental to the collective bargaining.

These provisions were therefore added in order to enable the labour to speak with one voice and to speak from strength. In this there is neither a denial of justice nor is there any encroachment on any of the fundamental rights.

32. It is not suggested that the Bombay Industrial Relations Act as a whole is void or has ceased to be law after the Constitution came into force. The argument that the provisions of Section 27A, Section 32, the newly added proviso to Section 33 and Section 97 are void, is based on the ground that they are in conflict with Article 19(1)(c); but this position is obviously untenable. Article 19(1) guarantees to all citizens of India under Clause (a), a right to freedom of speech and expression and by Clause (c), a right to form associations or unions.

33. The Act expressly recognizes the existence of unions and has provided both for the formation and registration thereof. There is nothing in the Act which forbids formation of trade unions even when there is in existence a representative union. But as held by the High Court of Bombay in *Raja Kulkarni's* case (A) referred to above, the right to form a union does not carry with it a right to represent, when there is an industrial dispute, before a conciliator or the Court or voluntary or compulsory arbitration.

That was a case where there was some dispute between the textile workers and the Mill Owners Association regarding bonus to be paid to the workers. This dispute was referred to the Industrial Court u/s 73A and was decided by that Court. The Mill Owners' Association appealed against that decision to the Appellate Tribunal and while that appeal was pending, the Petitioner, who was a leading member of Anr. labour union, made some speeches exhorting the workers to continue the strike which was commenced sometime before.

The Petitioner was therefore found guilty u/s 27, Industrial Disputes (Appellate Tribunal) Act, and convicted. He filed an appeal to the High Court of Bombay contending therein that the provisions of Sections 30 and 27A, Bombay Industrial Relations Act were void. The contention was repelled by the High Court. It was held that there was no contravention of the fundamental right guaranteed by Article 19(1) of the Constitution. The observations of Dixit J. in this case at page 120 are of material value. The learned Judge says:

I do not think that it is a sound argument to advance that every union must be represented before an Industrial Tribunal. After all both capital and labour have to put forward their points of view before an Industrial Tribunal and so their representation before that authority is to be secured and the Act aims at a workable method of representation before a Tribunal. It may be that the method laid down in the Act is not an ideal method of representation. But that is no ground for saying that, therefore, Sections 13, 14, 27A and 30 of the Act are void in view of Article 19(1)(c) of the Constitution.

The learned Judge also examined the provisions of Section 32 and the argument of the Counsel for the Appellant in that case, that the provisions of this section were arbitrary and discriminatory. The learned Judge said:

It is true that under the proviso to Section 32 an individual referred to in Section 32 will not be permitted to appear in any proceedings in which a representative union has appeared as a representative of employees. But this is so because the Act aims at a method of representation both on the part of capital and labour in a particular manner and where a representative union is entitled to appear, it is only proper that an individual employee should not be permitted to appear in a proceeding.

34. The impugned provisions of the Bombay Industrial Relations Act are not directly in conflict with Article 19(1)(c) as the Act does not aim at abolition of the unions, nor does it refuse to recognize them. There is also no conflict between the Act and Article 19(1)(a). The Act does not forbid a strike by the employees under all conditions. It only makes it obligatory in the first instance to have recourse to conciliation, voluntary or compulsory arbitration to achieve the settlement of the disputes and makes provisions for the labour being represented in these disputes by a representative union.

The law which seeks to obtain industrial peace by prohibiting strike and lockouts cannot be said to be arbitrary or discriminatory or imposing an unreasonable

restriction on the right to go on strike even if such a right was guaranteed by the Constitution. What the Legislature has rendered illegal is to go on strike during a limited period and without first availing of the machinery of conciliation and arbitration. This is not an abridgement of any of the fundamental rights.

It is also difficult to contend that the Act is in conflict with the provisions of Article 19(1)(a) because it does not permit an individual employee to conduct his own case. No such right is guaranteed by Article 19. In this connection the observations of the Supreme Court in *Raja Kulkarni v. State of Bombay*, AIR 1954 SC 73 (v. 41)(B) are helpful. At page 75, Gulam Hasan J. has observed:

The Act makes no discrimination between Textile workers as a class but lays down a reasonable classification to the effect that a certain percentage of membership possessed by a Union will be allowed to represent the workers as a class to the exclusion of Ors. ....

No doubt, in that case the challenge to the validity of the provisions of Sections 32 and 33 was on a slightly different ground. In that case it was contended that the law that had conferred a right to represent labour on the representative union alone to the exclusion of other trade unions was void and discriminatory. But the view expressed in that case applies to this case also.

I do not think that the Petitioner can be permitted to argue that in preventing them from appearing in the proceedings the Legislature has encroached upon their fundamental right or freedom of expression. On the whole, I am of opinion that the relevant provisions of the Act are not void as being repugnant to Article 19 of the Constitution and the argument of Mr. Daji cannot be accepted.

35. The next point argued was that the provisions of Sections 27A, 30, 33 and 97 are repugnant to the provisions contained in the Industrial Disputes Act of 1947, which was applied to Madhya Bharat during the year 1950. A two-fold argument was advanced in support of this line. It was firstly contended that both the Bombay Industrial Relations Act and the Industrial Disputes Act covered the same field and related to entry No. 22 in the concurrent list.

Article 254 applied to this case and by reason of it the law made by the Parliament would prevail as against the law enacted by the State Legislature in so far as it was repugnant to it. He secondly contended that the provisions of the impugned sections of the Bombay Industrial Relations Act were repugnant to the corresponding provisions of the Industrial Disputes Act and must therefore be deemed to have been repealed by that Act.

36. Article 254 lays down that whenever there is an inconsistency between a law made by the Parliament and the law made by the State with respect to matters enumerated in the concurrent list the law made by the Parliament whether passed before or after the law made by the Legislature of the State shall, subject to the provisions of Clause (2) prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void. This article has however no

application to the present case.

37. Article 254 is intended to deal with a case where both the Legislature of a State and the Parliament legislate with respect to one of the matters enumerated in the concurrent list. The words "Legislature of a State" and "law made by the Parliament" clearly indicate that this article is Intended to deal with a case of inconsistency arising on account of legislation with respect to one of the matters enumerated in the concurrent list both by the Legislature of the State and by the Parliament which have come into existence under the terms of the Constitution.

The Bombay Industrial Relations Act was adapted by the Legislature of the United State of Gwalior, Indore and Malwa by Act No. 31 of 1949. It was a pre-Constitution legislation and cannot be held to be law made by the Legislature of a State for the purpose of applying Article 254.

38. The Supreme Court of India has in *Soma Singh v. State of Pepsu*, AIR 1954 SC 311 ( v. 41)(C), considered a similar expression used in Article 286(3). Das J. with whom other learned Judges agreed, observed in that case as follows:

Perusal of Clause (3) of Article 286 of the Constitution, will at once indicate that that clause contemplates a post-Constitution law, for, it must be a law made by a "Legislature of a State which must refer to the legislature of a State created by the Constitution. Further it contemplates a law which can be but has not been reserved for the consideration of the President and has not received his assent. This provision clearly points to post-Constitution law, for there can be no question of an existing law continued by Article 372 being reserved for the consideration of the President for receiving his assent.

(38a) Act No. 31 of 1949 which extends the application of the Bombay Industrial Relations Act to Madhya Bharat, not being an Act of the Legislatcsri of the State created by the Constitution, is not affected by the provisions of Article 254(1). For the same reason Clause (2) of that Article has no application. This Clause is more specific and refers to laws made by the Legislature of a State specified in Part A or Part B of the first schedule. This clause too obviously refers to post-Constitution laws made by a Legislature of Part A or Part B State.

Hence the law made by the Parliament, viz., the Industrial Disputes Act, cannot by using the provisions of Article 254, Clause (1) and Clause (2), override the impugned provisions of the Bombay Industrial Relations Act.

39. The next question that arises for consideration is, whether the law continued by the provisions of Article 372, viz., the Bombay Industrial Relations Act is repealed either in part or in whole by the Parliament by reason of the application of the provisions of the Industrial Disputes Act to Madhya Bharat by Act No. 48 of 1950.

40. There is no provision in the Industrial Disputes Act expressly repealing the Bombay Industrial Relations Act either in part or in whole nor is there any other law made by the Parliament to this effect. It was also not suggested by Mr. Daji

during the course of his argument that there was an express repeal of the impugned provisions by an Act of Parliament.

The contention of the learned Counsel however was that there were provisions in the Industrial Disputes Act which were in conflict with the impugned provisions, viz., Sections 27A, 32, 33 and 97, Bombay Industrial Relations Act and these sections, therefore, could not co-exist with them. They must therefore be deemed to have been repealed impliedly by the Central Act.

41. In this connection it is necessary to bear in mind that Section 27A, the present Section 32 and the second proviso to Section 33, Bombay Industrial Relations Act were added by the amending Acts passed by the Legislature of the State and after securing the assent of the President as provided in Article 254(2) of the Constitution. These amending Acts were passed after the Parliament had enacted Act No. 48 of 1950 extending the Industrial Disputes Act to Madhya Bharat.

Even if, therefore, there be any repugnancy between the existing law viz., the Bombay Industrial Relations Act and the law made by the Parliament, i.e., the Industrial Disputes Act, the provisions added by these amending Acts are saved by Article 254(2) of the Constitution. In this view of the matter it is unnecessary to consider whether the provisions of Section 27A, Section 32 and proviso 2 to Section 33, Bombay Industrial Relations Act are repugnant to any of the provisions of the Industrial Disputes Act.

The effect of the impact of Article 254(2) of the Constitution is that the provisions of the law made by the State will prevail in the State notwithstanding any repugnancy that may exist between that law and the law made by the Parliament.

42. The only point that now remains to be considered is whether Section 97, Bombay Industrial Relations Act, as it was originally adapted in 1949 and continued by Article 372 of the Constitution is repugnant to or impliedly repealed by the provisions of Sections 23 and 24, Industrial Disputes Act.

43. In this connection Mr. Daji contended that both the existing law and the law made by the Parliament, viz., the Industrial Disputes Act are enacted among other things, with a view to provide for settlement of Industrial disputes between the employers and the employees and both the Acts cover the same field. He contended that the Industrial Disputes Act did not forbid the employees from going on strikes except in cases mentioned in Section 23, Industrial Disputes Act whereas Section 97, Bombay Industrial Relations Act rendered illegal a strike that was permissible under the provisions of the Industrial Disputes Act.

44. Section 23, Industrial Disputes Act lays down general prohibition of strikes and lockouts. According to that Section no workman employed in an industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout (a) during the pendency of conciliation

proceedings before a Board and 7 days, after the conclusion of such proceedings; (b) during the pendency of proceedings before a tribunal and two months after the conclusion of such proceedings; or (c) during any period in which a settlement or award is in operation, respect of any of the matters covered by the settlement or award.

45. Section 24 then provides that a strike or lockout shall be illegal if it is commenced or declared in contravention of Section 22 or 23 or it is continued in contravention of an order made under Sub-section (3) of Section 10.

46. The three Sub-sections (a), (b) and (c) to Section 23 read together indicate that during the pendency of conciliation proceedings before a Board and 7 days after the conclusion of such proceedings, and during the pendency of the proceedings before a tribunal" and two months after the conclusion of such proceedings, a strike or lockout is strictly forbidden. So also, after there is a settlement or an award the employees are forbidden from going on strike during the period it is in force.

47. Section 97, Bombay Industrial Relations Act also deals with strike and provides that

a strike shall be illegal if it is commenced or continued-

(a) in cases where it relates to an industrial matter specified in Schedule III or regulated by any standing order for the time being in force;

(b) without giving notice in accordance with the provisions of Section 42;

(c) only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change;

(d) in cases where notice of the change is given in accordance with the provisions of Section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in Section 54 is received by the Conciliator for the industry concerned for the local area; .

(e) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings;

(f) in cases where a special intimation has been sent under Sub-section (2) of Section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;

(g) in cases where a submission relating to such dispute or such type of disputes is registered u/s 66, before such submission is lawfully revoked;

(h) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under Sub-section (6) of Section 58 or u/s 71, or of the Industrial Court u/s 72 or 73, before the date on which the arbitration proceedings are completed, or the date on which the award of the

Labour or Industrial Court, as the case may be, comes into operation, whichever is later;

(i) in contravention of a registered agreement, or a settlement or effective award;

(J) where an industrial dispute is referred to a Wage Board for decision, before the date on which the decision comes into operation;

(k) in contravention of the terms of an effective decision of a Wage Board.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceeding.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), if fourteen clear days notice of a strike not falling under Clause. (a), (g), (h) or (i) of Sub-section (1) was given to the employer and the Labour Officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry, the employees who resume work within forty-eight hours of a labour Court or the Industrial Court declaring such strike to be illegal shall incur no penalty under this Act in respect of such strike;

Provided that nothing in Sub-section (3) shall apply to any strike which has within the period of notice been declared u/s 99 to be illegal.

48. These provisions read together indicate that in addition to the circumstances mentioned in the Industrial Disputes Act, the Bombay Industrial Relations Act forbids strike under certain other conditions also.

Section 97, Bombay Industrial Relations Act does not legalize what is forbidden by the Industrial Disputes Act and there is thus no direct conflict between the provisions of the Bombay Industrial Relations Act and the Industrial Disputes Act. But it is suggested that there is repugnancy between the two provisions inasmuch as the two operate on the same field and cannot co-exist together.

49. The test to determine whether there is any repugnancy between the Central and the State Acts have been laid down in numerous decisions, particularly of the Australian Courts. But it is generally regarded that the test of "occupied field" is by itself a very narrow and safe test. Mr. Daji, learned Counsel for the Petitioner, laid particular stress on the test laid down in *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*, and *The State of Bihar Vs. Bengal Chemical and Pharmaceutical Works Ltd.*,

It is unnecessary to discuss these cases at any length inasmuch as according to me, the provisions of the Bombay Industrial Relations Act which was an existing law preserved under Article 372 of the Constitution, is not affected by the Act No. 48 of 1950 passed by the Parliament by reason of Article 254.

50. Since I am of opinion that Article 254 of the Constitution has no application

to an existing law passed by the Legislature of the State in pre-Constitution days, it is unnecessary to consider whether there is any repugnancy between the existing law, i.e., the Bombay Industrial Relations Act as originally adapted and the law made by the Parliament, namely, the Industrial Disputes Act.

But at the same time it must be borne in mind that the existing law preserved by Article 372, is to continue in force until it is repealed, altered or modified by a competent Legislature. Trade Unions and Industrial and Labour Disputes are the subject-matters covered by Entry 22 of the Concurrent List and therefore both the Legislature of the State and the Parliament are competent to enact laws relating to them.

51. The provisions of Section 97, Bombay Industrial Relations Act are not repealed or altered or modified by any express legislation by the State Legislature or the Parliament but it has to be seen whether the subsequently enacted law extending the Industrial Disputes Act passed by the Parliament to Madhya Bharat, has by implications repealed, altered or modified the provisions of the earlier existing law.

52. Mr. Daji, the learned Counsel for the Petitioners, urged that the provisions of Sections 23 and 24 of the Industrial Disputes Act had the effect of repealing Section 97, Bombay Industrial Relations Act. There is considerable difference between a case of an implied repeal and the contention that an existing State Law shall not prevail because it is repugnant to the law made by the Parliament. What is repealed ceases to exist, and is, excepting for certain limited purposes, as if it was never enacted. But that is not so in the latter case.

53. In considering whether a statute is repealed by implication by a later enactment, it must be borne in mind that the Courts do not look with favour upon repeal by implication. The presumption is against the intention of the Legislature to repeal by implication.

54. Maxwell in his "Interpretation of Statutes" Ninth Edn., has laid down the rule of construction to be followed when the Court has to ascertain whether the second statute had impliedly repealed the first. At p. 173 the learned author has said:

But repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presumption that the Legislature did not intend to keep really contradictory enactments on the Statute-book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted, unless it be inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention.

55. Crawford in his celebrated work on "Construction of Statutes" has also discussed the subject at pp. 630 and 631 of the 1940 Edn. The principle laid

down by Crawford is:

As is thus apparent, the Courts do not look with favour upon implied repeals, and the presumption is always against the intention of the legislature to repeal legislation by implication. The absence of an express provision in a statute for the repeal of a prior law gives rise to this presumption, which is accentuated where the various statutes were enacted at the same session of the legislature. Consequently, as we have already indicated, the intent to repeal must clearly appear, and such a repeal will be avoided if at all possible.

This presumption against the intent to repeal by implication rests upon the assumption that the legislature enacts laws with a complete knowledge of existing laws pertaining to the same subject, so that the failure to add a repealing clause indicates that, the intent was not to repeal any existing legislation. This presumption, however, is overthrown if the new law is inconsistent with or repugnant to the old law, for the inconsistency or repugnancy reveals an intent to repeal the existing law. Similarly, when a statute specifically repeals certain acts or parts of an act, it will not be presumed that the legislature intended to repeal any act or any part of an act not mentioned.

56. To ascertain whether in a particular case the subsequently enacted law has repealed the earlier one, there must exist between their provisions such conflict or repugnancy as would make it impossible for both of them to co-exist. The provisions of the two statutes should be so incompatible that obedience to one should necessarily mean the breach of the other. If the two enactments can be obeyed at one and the same time, there is no such repugnancy or conflict between them.

In *Gentle v. Rapps*, (1902) 1 KB 160 (F), the question raised was, whether a bye-law made by the promoters of a Tramway Company in exercise of the statutory powers conferred upon them under the Tramway Act was repugnant to the General Law of the land. It was held:

A bye-law is not repugnant to the General law merely because it creates a new offence and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful which the General Law says is lawful. It is repugnant if it expressly or by necessary implication professes to alter the General law of the land.

Again a bye-law is repugnant if it adds something inconsistent with the provisions of a statute creating the same offence; but if adds something not inconsistent that is not sufficient to make the bye-law bad as repugnant.

57. In the present case there is no such conflict between Section 97, Bombay Industrial Relations and Section 23 or 24, Industrial Disputes Act. The preambles of the two enactments show that the Bombay Industrial Relations Act is wider in scope and seeks to regulate the relations of employers and the workers and to consolidate the law relating to industrial dispute.

The Industrial Disputes Act is mainly enacted to provide for settlement of industrial disputes only. Mr. Daji, the learned Counsel for the Petitioners did not contend that the whole of the Bombay Industrial Relations Act was repealed by the Industrial Disputes Act. His only contention was that Section 97, Bombay Industrial Relations Act stood repealed by reason of the enactment of Sections 23 and 24, Industrial Disputes Act.

58. I have therefore to consider whether the provisions relating to illegal strike in the Bombay Industrial Relations Act and the Industrial Disputes Act are so conflicting that they cannot coexist. A careful examination of Section 97 shows that it is not in direct conflict with Section 23 and 24. It does not make lawful what is declared unlawful under the Industrial Disputes Act; nor does it render unlawful what is stated to be lawful by the Act.

There is, to a certain extent, overlapping, but the provisions of Section 97 are wider and more exhaustive. But there is no direct conflict and the two provisions can stand together and be obeyed at one and the same time. In this view I am of the opinion that Section 97, Bombay Industrial Relations Act is not repealed by Section 23, Industrial Disputes Act.

59. For the reasons already given while dealing with the alleged conflict between the impugned provisions and Article. 19(1)(c) of the Constitution, I have held that one of the objects which the Legislature wanted to achieve by enacting the Bombay Industrial Relations Act was to facilitate and to encourage collective bargaining. The Legislation which seeks to achieve this purpose is necessary for protecting labour from exploitation by the employers.

Under the provisions of the law, the labour is represented by a representative union and it cannot be argued that when such union is representing it and the individuals are not permitted to appear, the proceedings are vitiated on the ground that they are opposed to the principles of natural justice. Though the individual is not allowed to appear as an Individual, he is represented in fact by a representative union and an order passed in a proceeding in which the union had in fact participated and appeared on behalf of the employees cannot be held to be void and against the principles of natural justice.

60. In the view I have taken, there is no force in this petition and it is hereby dismissed. Considering the circumstances of this case, I leave the parties to bear their own costs.

Nevaskar, J.

61. I agree and have nothing to add.