

(1959) 11 BOM CK 0005

In the Bombay High Court

Case No : A.F.O.D. No. 380 of 1955 (with First Appeal No's. 561 and 562 of 1955)

Khimji Poojnja and Co.

APPELLANT

Vs

N. Ramanlal and Co. and Others

RESPONDENT

Date of Decision : 13-11-1959

Acts Referred:

Bombay Forward Contracts Control Act, 1947 — Section 8, 8(1)
Constitution of India, 1950 — Article 254, 254(1), 367(2)

Citation : AIR 1960 Bom 532 : (1960) 62 BOMLR 277

Hon'ble Judges : Patwardhan, J;Gokhale, J

Bench : Division Bench

Advocate : M.H. Chhatrapati, C.S. Trivedi and C.K. Shah, for the Appellant; R.M. Shah and Rajni Patel, V.B. Patel and J. B. Patel, Government Pleader, for A.G., S.S. Rangnekar, for G.M. Divekar, for Attorney- General, for the Respondent

Judgement

Gokhale, J.

(Paras 1 to 7 omitted.)

(8) The principal point of controversy which has been agitated at considerable length in these appeals is whether S. 8 of the Bombay Forward Contracts Control Act, 1947 (LXIV of 1947), which will hereafter be referred to as "the Bombay Act", has been rendered inoperative by virtue of a notification issued by the Textile commissioner on 16-7-1953 under the provisions of the central Cotton Order, 1950, which order itself was issued in exercise of the powers conferred on the Central Legislature by the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), which will hereafter be referred to as "the Essential Supplies Act". As we have already indicated. the other law point which was raised on behalf of the plaintiffs in these suits was whether the Bombay Act was also rendered inoperative by virtue of the notification applying s. 15 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952). That notification was issued on 30-7-1954, that is to say, long after all the contracts in suit, and it has been

fairly conceded on behalf of the plaintiffs in all these appeals that in view of this position it will not be possible to press the argument urged in the lower Court regarding any repugnancy between the Bombay Act and the provisions of the Forward contracts (Regulation) Act, 1952.

(9) In order to appreciate the point as to the alleged repugnancy between the Bombay Act and the notification issued under the Central Cotton Control Order of 1950, it is necessary to note, to some extent, the history of the two legislations. So far as the local legislation is concerned, in 1922 the local Legislature passed the Bombay Cotton Contracts Act (XIV of 1922), but admittedly it had no provision regarding forward contracts. That was followed by the Bombay Cotton Contracts Act, 1932 (IV of 1932), which made certain provision regarding forward contracts. It appears, however, that the Government of Bombay, in the year 1947, was of the view that the control exercised by government over the cotton market under the Bombay Cotton Contracts Act of 1932 had proved ineffective in actual practice and though the Act provided that forward contracts other than those made through recognised association were void, in fact forward trading took place outside recognised associations and in a manner which was detrimental to genuine trade interests. That is why the Provincial Legislature enacted the Bombay Act and it came into force on 7-2-1948. The object of the Act was to provide for the regulation and control of forward contracts, for prohibition of options and certain other purposes, in the Province of Bombay. It has to be mentioned that though S. 1 of this Act was to come into force at once, sub-section (3) of S. 1 provided that the Provincial government may by notification in the Official gazette direct that all the remaining sections other than ss. 4, 5 and 7 shall come into force in the whole of the Province of Bombay or such part thereof and on such date and in their application to such goods as may be specified in the notification. Under sub-section (4), the Provincial Government was also empowered by a notification in the Official Gazette to direct that Ss. 4, 5 and 7 shall come into force in the whole of the Province of Bombay or such part thereof and on such date and in its application to such goods as may be specified in the notification. Four notifications appear to have been issued by the Provincial Government on 1-4-1948. By notification No. 4132/33 D(1), it was directed that Ss. 2, 3, 6 and 8 to 15 of the Bombay Act were to come into force in the whole of the Province of Bombay with effect from 1-4-1948 in their application to cotton. By Notification No. 4132/33-D(2), Ss. 4, 5 and 7 were also brought into force in the whole of the Province of Bombay in their application to cotton with effect from the same date. The third notification No. 4132/33-D(3) issued on the same date specified in respect of cotton a period of seven days after the date of the contract within which there should be delivery and payment of price. (See Bombay government Gazette, Extraordinary, Part I, dated 1-4-1948, pp. 1432-33). The fourth notification No. 4233/33-D(1) and No. 4233/33-D(2) recognized the East India Cotton Association in pursuance of the provisions of sub-section (5) of S. 3, and also sanctioned the bye-laws of the said Association in exercise of the powers conferred by sub-section (4) of S. 6 of the Bombay

Act. (See Bombay Government Gazette, Extraordinary, part IV-B, dated 1-4-1948, page 164A-1). These bye-laws have been subsequently amended and added to from time to time.

(10) Turning to the history of the Central legislation on the subject of cotton, it has to be mentioned that under the Government of India Act 1935, it was the Provincial government only which had power to legislate on the subject of trade and commerce within the province and production, supply and distribution of goods. This was by virtue of items 27 and 29 of List II, viz., the Provincial Legislative List, of the Seventh Schedule to the government of India Act. It is well known that the Central government, however, armed itself with very wide powers under the Defence of India Act, 1939, and the Defence of India Rules. Under Rule 81(2) of the said Rules, in so far as it is material, the Central government, so far as appeared to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, was empowered to provide for regulating or prohibiting the production, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever and for controlling the prices (or rates) at which such articles or things may be sold. The Indian Cotton (Control) Order, 1945, was promulgated in exercise of the powers conferred by sub-rule (2) of rule 81 of the Defence of India Rules, and under clause 3 of this Order, no person could enter into any contract or any option in cotton, and by virtue of clause 4 of this Order all contracts and options in cotton entered into or made after the commencement of the Order were declared void. It was further provided under clause 5 that the textile commissioner may, by general order, and subject to such restrictions and conditions as he may prescribe, exclude from the operation of the Order any class or description of contracts. This Order came to be issued on 29-12-1945. The Defence of India Act was to expire on 30-9-1946, but the British Parliament passed the India (Central government and Legislature) Act, 1946 (9 & 10 Geo. 6 Ch. 39), which came into force on 26-3-1946, to amend the Government of India Act, 1935, and under s. 2(1)(a) of the former Act it was provided that notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall, during the period mentioned in s. 4 of the Act, have power to make laws with respect to trade and commerce (whether or not within a Province) in and the production, supply and distribution of, cotton and woollen textiles and other goods mentioned in that clause. It appears that on 25-9-1946, the Central Government issued the Essential supplies (Temporary Powers) Ordinance, 1946, to provide for the continuance, during a limited period, of powers to control the production, supply and distribution of and trade and commerce in, certain commodities, by virtue of the powers given to the Indian Legislature by the British Parliament, and as the Indian Legislature was not in session then, the Governor general issued this Ordinance. Under s. 2(a) of this Ordinance "essential commodity" was defined as including a number of classes of commodities and though cotton and woollen textiles were included as an

essential commodity, raw cotton itself was not included as an essential commodity. This Ordinance was followed by the Essential Supplies (Temporary Powers) Act, 1946, which came into force on 23-11-1946. Section 2(a) (ii) of this Act mentioned cotton and woollen textiles as an essential commodity. It would appear that the Constituent Assembly, which replaced the Indian Legislature, which was empowered to repeal or amend any Act of Parliament of the United Kingdom in its application to India by virtue of the Indian Independence Act, 1947 (10 and 11 Geo. 6), enacted the Constituent Assembly Act III of 1949, known as the India (Central Government and Legislature) Amendment Act, 1949, which came into force on 10-6-1949. Section 3 of this Act amended S. 2 of the India (Central Government and Legislature) Act, 1946 (9 and 10 Geo. 6 Ch. 39), by inserting the words "raw cotton (including ginned cotton and unginned cotton or kapas) and cotton seed" after the words "woollen-textiles" in paragraph (a) of sub-section (1) of S. 2 of the said Act of 1946. The result of this amendment was that the Central Legislature got the power to enact legislation with respect to raw cotton, which formerly it did not possess. The Essential Supplies (Temporary Powers) Second Amendment Act, 1949, came to be enacted thereafter, and by S. 2 of this Act, in the preamble to the Essential Supplies (Temporary Powers) Act, 1946, after the words "woollen textiles", the words "raw cotton (including ginned cotton and unginned cotton or kapas) and cotton seed" were inserted. By S. 3 there was a further amendment of the original Essential Supplies (Temporary Powers) Act, and by clause (a), "(ii) raw cotton" was defined as including ginned cotton and unginned cotton or kapas. Section 3 of the Essential Supplies Act, so amended, thus gave the Central Government power to issue an order providing for regulating or prohibiting the production, supply and distribution of, and trade and commerce in, cotton, which became an essential commodity, with the object of maintaining or increasing its supplies and for securing its equitable distribution and availability at fair prices. Such an order came to be issued by the Central Government on 13-9-1950 and that order is known as the Cotton Control Order, 1950. That Order came into force at once. Clause 4 of the Order provided like the earlier Indian Cotton (Control) Order of 1945, that no person could enter into any contract or option in cotton, except in the cases excluded from the operation of this clause under clause 6. Under clause 5, all contracts and options entered into or made after the commencement of the Order in contravention of clause 4 were to be void. Under clause 6, the Textile Commissioner was empowered, by general order and subject to such restrictions and conditions as he may prescribe to exclude from the operation of clause 4 any class or description of contracts. The effect of this Order admittedly was that no contract in cotton could be entered into and, if entered into, was to be void. But the Textile Commissioner could by general order and subject to such restrictions and conditions as he may prescribe relax from the operation of clause 4 any class or description of contracts relating to cotton. Now, the original Essential Supplies Act would have expired on 1-4-1951, but the life of the Act came to be extended by the Essential Supplies (Temporary Powers) Amendment Act (LII of 1950) from 1-4-1951 to 31-12-1952. There was a further extension of the life of

this Act under the Essential Supplies (Temporary Powers) Amendment Act (LXV of 1952), which extended the life of the original Act from 31-12-1952 to 26-1-1955. That is how, and there is no dispute about this, that when the suit contracts were entered into, both the Essential supplies Act as well as the Cotton Control Order, 1950, issued under its provision, continued to have operation. On 16-7-1953, the Textile Commissioner, in exercise of the powers conferred upon him by clause 6 of the Cotton Control Order, 1950, issued a notification relaxing the prohibition placed on contracts in cotton. As the question in these appeals is concerned with the alleged repugnancy between S. 8 of the Bombay Act and this notification, it would be convenient to reproduce the entire notification, which runs as follows:-

MINISTRY OF COMMERCE AND INDUSTRY

Notification.

Bombay, 16th July 1953.

S. R. O. 1425. - "In exercise of the powers conferred upon me by clause 6 of the Cotton Control Order, 1950, I hereby exclude, subject to the restrictions and conditions specified in paragraph 2 below, the following classes or descriptions of contracts relating to Indian cotton produced during the cotton season 1953-54, from the operation of clause 4 of the said Order, namely:-

(I) Ready Contracts;

(ii) Delivery Contracts; that is to say, Forward Contracts for cotton (full-pressed, half-pressed or loose) of specific description and for specific delivery at specified price, delivery orders, railway receipts or bills of lading against which contracts are not transferable to third parties;

(iii) Hedge Contracts for February 1954; that is to say, Forward Contracts entered into by members of the East India Cotton Association Limited, entitled to the use of the Clearing House of the Association where such contracts are made in accordance with the rules and bye-laws of the association in the official markets of the Association and are for February 1954 delivery.

2. (1) Nothing in this permission shall apply in relation to -

(a) any contract for the sale or purchase of any cotton wherein the price stipulated is less than the minimum price or more than the maximum price fixed by the textile commissioner under clause 3 of the said Order for Indian cotton produced during the cotton season 1953-54 in respect of the subject-matter of the contract having regard to the place of delivery;

(b) any contracts of sale by a manufacturer except under and in accordance with the terms of a Special permission granted by the Textile Commissioner of the Director (Cotton);

(c) a contract of sale with an overseas buyer for the purposes of export.

(2) Every contract in which the final price is not named shall be construed as if the following clause was inserted therein:-

"The price payable shall be within the range of the minimum and the maximum prices fixed by the Textile Commissioner under clause 3 of the Cotton Control Order, 1950, for Indian cotton produced during the cotton season 1953-54".

(11) Now, it is urged on behalf of the plaintiffs in these appeals that the provisions of S. 8 of the Bombay Act are repugnant to the provisions of this notification, and this notification having been issued by the Textile Commissioner under the powers conferred on him under clause 6 of the Cotton Control Order, 1950, which Order itself was issued by virtue of S. 3 of the Essential Supplies Act, so far as the suit contracts are concerned, S. 8 must be treated as void and of no effect, and, therefore, the suit contracts would be legal and enforceable contracts. Section 8 of the Bombay Act runs as follows:-

"8. (1) Every forward contract for the sale or purchase of, or relating to, any goods specified in the notification under sub-section (3) of section I which is entered into, made or to be performed in any notified area shall be illegal if it is not entered into, made or to be performed-

(a) in accordance with such bye-laws, made under S. 6 or 7 relating to the entering into, making or performance of such contracts, as may be specified in the bye-laws, or

(b) (i) between members of a recognised association,

(ii) through members of a recognised association, or

(iii) with a member of a recognised association, provided that such member has previously secured the written authority or consent, which shall be in writing if the bye-laws so provide, of the persons entering into or making the contract,

and no claim of any description in respect of such contract shall be entertained in any Civil Court.

(2) Any person entering into or making such illegal contract shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both".

(12) It is contended on behalf of the plaintiffs that the Central legislation is a special legislation dealing with the subject of contracts relating to Indian cotton produced during the cotton season of 1953-54 inasmuch as the notification issued under clause 6 of the Cotton Control Order, 1950, relaxes the prohibition under clauses 4 and 5 of the said Order with regard to cotton of that season. As against that, the Bombay Act is a general Act regulating and controlling forward contracts and prohibiting options in several commodities though it was made applicable to cotton by a notification of 1-4-1948, and, therefore, if there is any inconsistency in the two legislations, it is the Central legislation which is more specific, that must prevail. Reliance is placed in support of this contention on the

provisions of Art. 254(1) of the Constitution. It is concerned, and in our opinion rightly, that so far as the instant case is concerned, there is no question of any repugnancy between the two competing laws by reason of S. 107 of the Government of India Act or Art. 254(2) of the Constitution. Under Art. 395 of the Constitution, the Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending and supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are repealed. Obviously, therefore, after the Constitution, the question of repugnancy will have to be considered not in the light of S. 107 of the government of India Act, even though the Bombay Act and the original Essential supplies Act are pre-Constitution Provincial and Central Act respectively. Article 254(2) of the Constitution would also be obviously inapplicable. The question is whether it could be aid that the Bombay Act and, especially, section 8 thereof would be rendered void or inoperative by virtue of the Order and the notification issued under the Essential Supplies Act because of the provisions of Article 254(1) of the Constitution. Article 254(1) runs as follows:-

254. (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 provision of clause (2) the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void".

Now, it has not been disputed that the Essential Supplies Act, though it is a pre-Constitution legislation, would be a law made by Parliament within the meaning of Art. 254(1). It has been adopted by the Indian Parliament after the coming into force of the Constitution, because, as already pointed out, the life of the Act was extended twice, in the first instance from 1-4-1951 to 31-12-1952 by the Essential Supplies (Temporary Powers) Amendment Act (LXV of 1952). In *Basantlal Banarsilal Vs. Bansilal Dagdual*, an argument that what was done by Act LII of 1950 was that further life was merely given to the original Essential Supplies Act of 1946 and that there was no legislation by Parliament was repelled and it was held that when Parliament put Act LII of 1950 on the statute book it was passing legislation in exercise of its powers conferred by Art. 369 of the Constitution which empowered Parliament, during a period of five years from the commencement of the Constitution, to make laws with respect to trade and commerce within the State in, and the production, supply and distribution of, cotton and woollen textiles and raw cotton (including ginned cotton and unginned cotton or kapas). The Indian Cotton Control Order, 1950 was issued in exercise of the powers vested in the Central Government under s. 3 of the Essential Supplies Act. By virtue of the power conferred on the Textile Commissioner under clause 6 of this Order he issued the notification dated 16-7-1953. Under s. 4 of the Essential Supplies Act, the Central Government was empowered by notified order

to direct that the power to make orders under S. 3 shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction be exercisable also by such officer or authority sub-ordinate to the Central Government or such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction. the validity of such delegation has been upheld by the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . There is no difficulty, therefore, in holding that the provisions of the Essential Supplies Act, read with the Cotton Control Order of 1950 and the notification issued by the Textile Commissioner, would be a law made by Parliament.

(13) But the real difficulty in the way of the palaintiffs in applying Article 254(1) of the Constitution is whether the Bombay Act would be "a law made by the Legislature of a State". Now, it is contended by Mr. Chhatrapati as well as Mr. Rajani Patel, on behalf of the plaintiffs in the three suits, that though the Bombay Act is Provincial legislation, on coming into force of the Constitution, the Legislature in the Province of Bombay which continued till 1952, became the Legislature of the State of Bombay and, therefore, the Bombay Act would be a law made by the Legislature of the State. It is somewhat difficult to accept this argument. Reliance is placed by both the learned advocates on the provisions of the Adaptation of Laws Order 1950. Under Art 372(1) of the Constitution, all the law in force in the territory of India immediately before the commencement of the Constitution is to continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. It is not shown that Section 8 of the Bombay Act, which is the impugned section, has undergone any alteration or amendement at the hands of the Legislature of the Bombay State after the constitution. Under clause (2) of Art. 372, it is provided that for the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of the Constitution, the President may by order make such adaptations and modification of such law, whether by way of repeal or ;amendment, as may be necesary or expedient, and provide that rthe law shall as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any Court of law. In exercise of the powers conferred on him by clause (2) of Art. 372, the President of the Union of India made the Adaptation of Laws Order, 1950, which came into force on 26-1-1950. Out attention was invited by both counses to clauses 2(b) and (c) of the Order which define "existing Central Law" and "existing Provincial Law". Attention was also invited to Part I regarding Adaptation of (existing Central or Provincial laws) and clause 4 thereof. We do not think that ;any of these clauses are helpful to the palaintiffs to the plaintiffs in enabling us to hold that the Bombay Act is a law made by the Legislature of the State. Attention was also invited to clause 21 of this Order which provides that any Court, Tribunal or authority requaired or empowered to enforce any law in force in the territory of India immediately before the appointed day shall, notwithstanding that this

Order makes no provision or insufficient provision for the adaptation of the law for the purpose of bringing it into accord with the provisions of the Constitution, construe the law with all such adaptations as are necessary for the said purpose. This clause only provides that where the Adaptation of Laws Order makes no provision on insufficient provision for the adaptation of any law, the Court may construe the law in such a way as to bring it into harmony with the provisions of the Constitution. That obviously cannot confer on the Court any power to construe Art. 254 of the Constitution with a view to bringing the Bombay Act within the four corners of Article 254.

(14) Then Mr. Chhatrapati contended that he could also take advantage of the provisions of the General clauses Act, 1897, as adapted by the Adaptation of Laws Order, 1950. Under Art. 367(1) of the Constitution, unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Art. 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Now, the adaptation of the General Clauses Act, 1897, by the Adaptation of Laws Order, 1950, is to be found in Part IV-C of the Bombay Government Gazette, Extraordinary, dated February 14, 1950, at pages 82(74) to 82(81). Mr. Chhatrapati relies on clauses (58) and (59) of this adaptation at page 82(80). Under clause 58) "State" shall mean a part A State, a Part B State or a Part C state. Under clause (59), "State Act" shall mean an Act passed by the Legislature of a State established or continued by the Constitution. The argument of Mr. Chhatrapati is that since the Bombay Act continues in Bombay State after the Constitution, it must be construed to be a State Act and, therefore, an Act passed by the Legislature of the State established or continued by the Constitution. Mr. Chhatrapati takes advantage of the fact that the Provincial Legislature in Bombay at the time the Constitution came into force was continued as the Legislature of the State till 1952. This argument is without substance. In our view, all that the expression "State Act" means is an Act passed by the Legislature of a State after the coming into force of the Constitution, which Legislature is either established by the Constitution, or continued by the Constitution, before elections were held after the Constitution. The expression "a law made by the Legislature of a State" must, in our judgment, be construed by reference to the relevant provisions of the Constitution, including Article 254. Under Article 367(2), it is stated that any reference in the Constitution to Acts or laws of, or made by Parliament, or to Acts or laws of, or made by, the Legislature of a State specified in Part A or Part B of the First Schedule shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a governor or Rajpramukh, as the case may be. The words "specified in Part A or Part B of the First Schedule" as well as the words "or Rajpramukh" were omitted by the constitution (Seventh Amendment) Act, 1956. But it is clear that under Art. 367(2) there is a reference to laws made by the Legislature of a State specified in Part A or Part B of the First Schedule. therefore, in our view, under Art. 367(2), before its amendment in

1956, the expression "a law made by the Legislature of a State" must have reference to the Legislature of a State after the coming into force of the Constitution. The expression "a law made by the Legislature of a State" is used in both the clauses of Art. 254. Under clause (2) of Art. 254, it is provided that where a law made by the Legislature of a State specified in Part A or Part B of the First Schedule 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. The words "specified in Part A or Part B of the First Schedule" were omitted by the Constitution (Seventh Amendment) Act, 1956, here also. But the reference in this clause that the law so made by the Legislature of such State shall prevail in that State only if it has been reserved for the consideration of the President and has received his assent, shows that in clause (2) the expression "a law made by the Legislature of a State" must mean a law made after the coming into force of the Constitution. It is a well settled canon of construction that where the same expression is used in several sections of a statute, normally its connotation would be the same in that statute unless the context shows otherwise. This is much more so when the same expression happens to be used in two clauses of the same article. Further, in both the clauses of Article 254, the repugnancy contemplated is between "a law made by the Legislature of a State" and "a law made by the Legislature of a State" and "a law made by Parliament" or "any existing law". Article 366 of the Constitution, which defines certain expressions, defines "existing law" in clause (10) as meaning

"any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this constitution by any Legislature, authority or person having power to make such a law, Ordinance, order bye-law, rule or regulation".

In our view, the expression "existing law" would include any law made either by the Provincial or Central Legislature before the commencement of the Constitution; and that is apparent from the definitions of the expressions "existing Central law" and "existing Provincial law" in clause 2 of the Adaptation of Laws Order, 1950. Therefore it would appear that both under clauses (1) and (2) of Art. 254, the repugnancy contemplated is between a law made by the Legislature of a State and a law made by Parliament and an existing Central law, provided the Central legislation is in respect of matters enumerated in the Concurrent List. It is significant that Art. 254 does not refer to any repugnancy between existing provincial law and Central legislation on the same subject. Clause (2) of Art 367, which has been already referred to above, includes an Ordinance made by a Governor in laws of, or made by, the Legislature of a State. But here again there is no reference in Art. 367, which is an Interpretation article, to any existing law made by the Provincial Legislature. In our judgment, therefore, the expression "a law made by the Legislature of a State" in clauses (1) and (2) of Art. 254 of the Constitution cannot include a law made by the

Provincial Legislature under the government of India Act, 1935. The question of repugnancy between a law made by a Provincial Legislature before the Constitution and a law made by Parliament cannot, therefore, be decided under Article 254 of the Constitution.

(15) We are supported in this conclusion by a decision of the Supreme court in *Soma Singh v. State of Pepsu*, (1954) SC 393: AIR 1954 SC 311. The short question that the Supreme Court had to decide in that case was whether the Patiala and East Punjab States Union General Sales Tax Ordinance, which was promulgated on 5-11-1949, had become void since the date of the commencement of the Constitution, and reliance was placed on Art. 286(3) of the Constitution, which provided, before its amendment in 1956, that no law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent. Now, the Central Act No. LII of 1952 declared certain commodities as essential for the life of the community and S.3 of the Act provided that no law made after the commencement of this Act by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent. One of the points that the Supreme Court had to decide was whether the Ordinance of the Patiala and East Punjab States ran counter to clause (3) of Art. 286 of the Constitution, and it was held that the clause contemplated a post Constitution law, because the expression "Legislature of a State" must refer to the Legislature of a State created by the Constitution. Further, the said clause contemplated a law which could be, but had not been, reserved for the consideration of the President and had not received his assent and, therefore, the provision clearly pointed to a post-Constitution law; for, there could be no question of an existing law continued by Art. 372 being reserved for the consideration of the President for receiving his assent. This Supreme Court authority is directly on the point as to the meaning of the expression "law made by the Legislature of a State" as employed in Art. 286(3). As already pointed out, normally an expression which is used in statute at several places must be given the same meaning, unless the context indicates otherwise; besides as stated earlier the language of Art. 254(1) and (2) itself makes it quite clear that the expression "a law made by the Legislature of a State" must refer to a post-Constitution law.

(16) This decision of the Supreme Court was followed in *Janardhan v. Management Hukumchand Mills Limited, Indore*, (S) AIR 1956 M p 199, where it was held that Article 254(1) was 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, and the words "Legislature of a State" and "law made by the Parliament" clearly indicated that this Article was 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.

(17) But it is contended on behalf of the plaintiffs that outview as regards the meaning of the expression "a law made by the Legislature of a State" would come into conflict with the decision of a Division Bench of this Court as also a later decision of the Supreme Court. In *Basantlal Banarsilal Vs. Bansilal Dagdulal*, , this Court had to consider the question of repugnancy between the Bombay Forward Contracts Control Act, 1947, and the Essential Supplies (Temporary Powers) amendment Act, 1950 (LII of 1950), and it was held that the Central legislation must prevail over the Bombay Act and that the Bombay Act did not remove the prohibition imposed by the Central law, with regard to the entering into of forward contracts in respect of oil seeds, and even if it did remove the prohibition that prohibition was reimposed by the Central law which is a subsequent legislation passed by Parliament. In our view, though Art. 254 of the Constitution came to be considered by this Court in that case, the question whether the Bombay Act fell within the expression "a law made by the State Legislature" under Art. 254 was never raised and considered. Our attention was also invited to *Zaverbhai Amaldas Vs. The State of Bombay*, . In that case, the Supreme Court had to consider the conflict between Bombay Act XXXVI of 1947 and the Essential Supplies (Temporary Powers) Act as amended by the Central Act No. LII of 1950, and it was held by their Lordships of the Supreme court that Art. 254(2) of the Constitution, which was in substance a reproduction of S. 107(2) of the Government of India Act, 1935, with certain additions, embodied the principle that where there is legislation covering the same ground both by the Centre and by the State, both of them being competent to enact the same, the law of the Centre should prevail over that of the state; and, therefore, as the Central Legislation was in respect of the same matter as the Bombay Act within the meaning of Art. 254(2) of the Constitution, S. 2 of the Bombay Act XXXVI of 1947 could not prevail as against S. 7 of the Essential supplies (Temporary Powers) Act XXIV of 1946 as amended by Act LII of 1950. Undoubtedly this decision would indicate that, their Lordships of the Supreme Court considered the Bombay pre-Constitution legislation as a law made by the Legislature of a State under Art. 254(2) of the constitution. But here again the question as to the interpretation of the expression "a law made by the Legislature of a State" does not appear to have been raised before the Supreme court and it would seem that the earlier case of the Supreme Court (1954) SCJ 393 : AIR 1954 SC 311, which was decided on 11-3-1954, was not brought to their Lordships' notice in *Zaverbhai Amaldas Vs. The State of Bombay*, , which was decided on 8-10-1954. We must, therefore, hold that it will not be open to us to consider the question of any repugnancy between S. 8 of the Bombay Act and the notification issued under the Cotton Control Order, 1950, which is a Central legislation, under Art. 254(1) of the Constitution which, it is conceded, is the only article which could be

taken into consideration in the present case.

(18) But it is further contended that even assuming that Art. 254(1) of the Constitution cannot apply, we must hold that S. 8 of the Bombay Act is rendered inoperative by the Central legislation on the ground of an implied repeal of the former by the latter. On this point, reliance was placed by both Mr. Patel and Mr. Chhatrapati on Art. 372(1) of the Constitution, under which notwithstanding the repeal by the Constitution of the enactments referred to in Art. 395 but subject to the other provisions of the Constitution, all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. The argument is that Parliament was competent to amend and alter the Essential Supplies Act after the Constitution by virtue of Article 369, which empowered it to make laws with respect to trade and commerce within a State in, and the production, supply and distribution of, cotton and other matters for a period of five years from the commencement of the Constitution, as if these matters were enumerated in the Concurrent Lists; and it is further urged that since Parliament by virtue of Art. 372 could alter, repeal or amend the Bombay Act, it must be assumed that in issuing the notification as provided under Cotton Control Order, 1950, there has been an implied repeal of S. 8 of the Bombay Act. It must be immediately stated that this point was never raised in the trial Court. It has to be mentioned that though the repugnancy between a Provincial law and a Central law was raised in the trial Court, neither the Advocate General of Bombay nor the Attorney General were made parties there. They were made parties for the first time in these appeals and it has been contended by the learned Government Pleader, who has appeared on behalf of the Advocate General, that if this point had been raised in the trial Court and if the Advocate General had been made a party, government would have been able adequately to contest the position as regards the alleged repugnancy as well as implied repeal. The government Pleader contends that Government would have been able to show that so far as the application would have been able to show that so far as the application of the Bombay Act and the Central legislation is concerned, there was no possibility of any conflict, because the East India Cotton Association, Bombay, was working in close co-operation with the Textile commissioner, who issued the notification under the cotton Control Order. In our view, there is some substance in this contention and we are not inclined to allow the appellants to raise this question of implied repeal at the stage of these First Appeals. As however, arguments were addressed to us at some length on this point, we propose briefly to deal with those arguments.

(19) It is contended on behalf of the plaintiffs that the doctrine of implied repeal is a part of the rule of repugnancy, though it is admitted that there is some distinction between repugnancy and implied repeal. It is well settled that whenever it is sought to establish that there is repugnancy between two competing statutes which must inevitably result in supersession of one of them, it has to be borne in mind that there is always a presumption in favour of the

validity of both statutes. Every endeavour has, therefore, to be made to reconcile the two and consider both in such a way as to avoid repugnancy. See the observation of Sulaiman, J. in AIR 1939 74 (Federal Court) . the tests which are generally applied to determine whether there is repugnancy between two statutes as deducible from judicial decisions may be thus briefly summarised : (1) There may be inconsistency in the actual terms of the rival statutes. when such an inconsistency exists, there is no difficulty in deciding the question. But the view that repugnancy can never arise unless there is an actual collusion or conflict between the two statutes or, as is sometimes said, that there can be no proper repugnancy unless one legislation says "do" and the other says "don't", has been regarded as too narrow a view. See the observations of B. N. Rau J. in G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury, . (2) Even though there may be no direct conflict, a State law may become inoperative because Parliamentary legislation is intended to be a complete exhaustive Code on the subject with which it deals. As observed by Dixon, J. in Ex Parte McLean (1930) 43 CLR 472,

"The inconsistency does not lie in the mere coexistence of 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 the particular conduct or matter to which its attention is directed".

(3) Inconsistency between the State ;and Parliamentary legislation may also arise where two Legislatures seek to exercise their powers over the same subject-matter. If Parliament evinces its intention to cover the whole field, that would be a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field. See the observations of Issacs J. in Clyde engineering Co. v. Cowburn, (1926) 37 CLR 466, See also Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, & also Deep Chand Vs. The State of Uttar Pradesh and Others, .

(20) The short submission of the learned advocates appearing on behalf of the plaintiffs is that S. 8 of the Bombay Act must be held to have been impliedly repealed by the notification issued by the Textile Commissioner on 16-7-1953 because of the inconsistency between the two. Now, as we have already indicated, the rule as to repugnancy is embodied in Art. 254 of the Constitution, which we have held to be not applicable to the present case. But it is then contended before us that even apart from the rule of repugnancy embodied in Article 254, we should consider the question on the basis of the wider principle of repugnancy, including that of implied repeal, apart from the Constitution. We doubt very much whether it will be possible for us to do so especially as the question of implied repeal was never raised and argued in the trial Court as it has been argued before us. But even as regards this rule of repugnancy and repeal by implication, certain principles have to be kept in mind. It is no doubt true that if on the same subject there are two competing Acts and if the provisions of a later Act are so inconsistent with, or repugnant to, those of the earlier Act, then

the two cannot stand together and the earlier stands impliedly repealed by the later. *Leges posteriores priores contrarias abrogant*: Later laws repeal earlier laws inconsistent, therewith. See Maxwell on Interpretation of Statutes, 10th edition, page 161. It has also been observed by the same learned author at page 170:

"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 is inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention".

(21) Mr. Chhatrapati has contended, as already indicated, that the Cotton Control Order of 1950, which was a Central legislation completely prohibited contracts in cotton under clause 4. The prohibition could be relaxed under Clause 6 by the Textile Commissioner and it was so relaxed by the notification dated 16-7-1953. Under clause 9 of the Cotton Control Order, no person could purchase, sell, store or carry on business in cotton except under and in accordance with the conditions of a licence in Form "A". It is not disputed that the plaintiffs in all the suits and the defendant, who is common in all the suits, are holders of requisite licences. It does appear that the suit contracts were entered into between the parties after the notification came into effect in July, 1953, permitting contracts with regard to Indian cotton produced during the cotton season of 1953-54; and it is, therefore, urged that the notification which dealt specifically with contracts relating to Indian cotton during a particular season must be taken to have repealed S. 8 of the Bombay Act. There are three clauses to clause 1 of the Notification, which has been already quoted in full. Clause (i) deals with Ready Contracts. Clause (ii) deals with Delivery Contracts, which are defined as Forward Contracts for cotton (full-pressed, half-pressed or loose) of specific description and for specific delivery at specified price, delivery orders, railway receipts or bills of lading against which contracts are not transferable to third parties. Clause (iii) deals with Hedge Contracts for February 1954; that is to say, Forward Contracts entered into by members of the East India Cotton Association Limited, entitled to the use of the Clearing House of the Association where such contracts are made in accordance with the rule and bye-law of the Association and are for February 1954 delivery. It is, therefore, contended that the Textile Commissioner having issued the notification was aware of the East India Cotton Association and its bye-laws and if with respect to Hedge Contracts which were for February 1954 the restriction was that they were to be entered into by the Members of the East India Cotton Association and in accordance with rules and bye-laws of the Association, then necessarily he could not have intended that the conditions contemplated in S. 8 were also applicable to delivery contracts, similar to the suit contracts. Besides, under s. 8(1)(b) of the Bombay Act, forward contracts would be between members of a recognised association, through a member of

recognised association, or with a member of a recognised association. But the notification contemplated only contracts entered into by members of the East India Cotton Association and, therefore, by necessary implication contracts through a member of the East India Cotton Association, or with a member of the said Association were not permitted under the notification. There is undoubtedly some force in this contention. But, in the present case, we are concerned with the repugnancy between section 8 of the Bombay Act and the provisions of the notification issued by the Textile Commissioner relating to delivery contracts, and we are not prepared to say that the two cannot be reconciled. The Bombay Act was intended for the regulation and control of forward contracts. The notification issued by the Textile Commissioner relaxed the prohibition on contracts in cotton which was imposed by the Cotton Control Order, 1950. The Essential Supplies Act, under which the Order was issued, was enacted with the object of securing an equitable distribution of essential commodities. Delivery contracts of a particular type alone were permitted so far as the cotton-crop season of 1953-54 was concerned under the notification. But that does not, in our view, indicate that the Textile Commissioner, who issued the notification under the powers vested in him under the Cotton Control Order, 1950, intended that notification to be a complete code overriding the restrictions on Forward Contracts imposed by the Bombay Act in the State of Bombay. The present is not a case really of repugnancy between two rival statutes; it is a case of repugnancy between a Bombay Act and a notification issued by a competent authority under a Central legislation. Undoubtedly the notification will also be Central legislation. But, if as the learned government Pleader has stated, there has been co-operation between the Textile Commissioner and the East India Cotton Association which has been recognised under the Bombay Act, it is difficult to conclude that the notification was intended to be an exhaustive and exclusive legislation dealing with the subject of delivery contracts regarding cotton crop of 1953-54 in the State of Bombay. Even assuming, therefore, that we were to allow the plaintiffs to raise this question of implied repeal of Section 8 of the Bombay Act by the Notification issued by the Textile Commissioner, we would have been inclined to hold that the two can co-exist and there would, therefore be no implied repeal of section 8 of the Bombay Act.

(22) As we have already stated, in the trial Court a point was raised that the Bombay Act was repugnant to the provisions of the Forward Contracts (Regulation) Act, 1952, (74 of 1952). But it has been fairly conceded in the present appeals that that Act cannot apply to the suit contracts, since the notification applying section 15 of that Act to cotton came into force on 30th July 1954, i.e., much after the period during which the suit contracts were entered into. Incidentally, however, we may notice that section 29 of this Act 74 of 1952 states that if immediately before the date on which this Act or any other provision contained therein is made applicable to any goods or classes of goods in any State, there is in force in that State any law corresponding to this Act or, as the case may be to any provision contained therein which is applicable to

those goods or classes of goods, that law shall stand repealed on the said date. and the proviso to this section contains certain savings. it would be obvious, therefore, that Parliament in enacting this legislation has taken care to repeal corresponding laws in the State. However, whether and to what extent this legislation will affect the Bombay Act is a question which does not fall to be considered in his case.

(23) Mr. Chhatrapati has further argued that even assuming there is no implied repeal of section 8 of the Bombay act, it should be held that his clients' contracts had specified the conditions of section 8. Now, this again is a question which has been raised for the first time in this appeal, because by pursuance of Exhibit 97 filed by both the parties in Civil Suit No. 68 of 1954 it was admitted that the suit contracts have not been effected according to the rules and regulations of the East India Cotton Association, Bombay, but that the contracts have been effected according to the rules and regulations of the Ahmedabad Cotton Merchants Association. If that be so, it cannot be said that the contracts of Mr. Chhatrapati's client satisfied the conditions of S. 8 (1) (a) of the Bombay Act, which provides that every Forward Contract for the sale or purchase of, or relating to, any goods specified in the notification under sub-s. (3) of S. 1 which is entered into, made or to be performed in any notified area shall be illegal if it is not entered into, made or to be performed in accordance with such bye-laws, made u/s 6 or 7 relating to the entering into, making or performance of such contracts, as may be specified in the bye-laws. There is no dispute that the East India Cotton Association is a recognised Association and its bye-laws had been sanctioned by the Government of Bombay while the Ahmedabad Cotton Merchants' Association is not a recognised Association. But Mr. Chhatrapati contends that it is not necessary for his client's contracts to satisfy S. 8 (1) (a) , because the contracts would fall under S. 8(1)(b)(iii) . He says that admittedly his client is a member of the East India Cotton Association and his contracts would fall under that clause and it is not necessary that such contracts should be in accordance with the bye-laws of the East India cotton Association. In short, the argument of Mr. Chhatrapati is that the use of the word "or" between clauses (a) and (b) of S. 8(1) would indicate that the contracts to be legal under s. 8 can either satisfy the conditions under clause (a) or clause (b) of S. 8 (1). this argument, as already indicated, was never raised in the trial Court and the argument does not appear to us to be sound. though undoubtedly the two clauses (a) and (b) of S. 8 (1) are separated by an "or", in our view, the conditions of both must be satisfied and admittedly the suit contracts were not made in accordance with the bye-laws of the East India Cotton Association. As observed by the trial Court in First Appeal No. 380 of 1955, the plaintiff had neither alleged nor shown that consent of the defendant was previously secured by the plaintiff. therefore, there is no question of satisfying even clause (b) (iii) of Section 8(1) because that contemplates a forward contract with a member of a recognised association, provided that such member has previously secured the written authority or consent, which shall be in writing if the bye-laws so provide,

of the persons entering into or making the contract. the bye-laws of the East India Cotton Association do Not Provide for any consent in writing. there is no question of any written authority. But Mr. Chhatrapati contends that his client, the plaintiff, had secured the oral consent of the defendant and this oral consent, says Mr. Chhatrapati, was evidenced by the contracts themselves which are signed by the defendant.. In this connection, Mr. Chhatrapati has tried to derive support from *Hirji Bharmal Vs. Bombay Cotton Ltd.*, in which Chagla, C. J. observed that

"when a contract was arrived at between a member of the East India cotton association and a non-member, which contract was not challenged on the ground of its being obtained by undue influence or fraud or any other factor which vitiated the contract, then it is clear that if the consent of the plaintiffs was required to that contract, that consent is implicit in the very fact of the plaintiffs and the defendants having entered into this contract;"

and, therefore, there would be no contravention of the provisions of S. 8 (1) (b) (iii) of the Bombay Act. In the present case, this question of consent and of the contracts fulfilling the provisions of s. 8 (1) (b) (iii) was not raised in the trial Court, and in any case, as the contracts are admittedly not entered into in accordance with the bye-laws of the East India Cotton Association, they cannot be regarded as legal contracts u/s 8 of the Bombay Act.

(24) It may also be mentioned that Mr. C. K. Shah, on behalf of the defendants, contended that the suit contracts could not be said to have fulfilled even the conditions laid down by the textile Commissioner's notification of 16th July 1953, regarding delivery contracts. This point again has never been raised in the Courts below on behalf of the defendant in any of the suits. the point that was urged in the lower Court about the contracts was that they were vague for uncertainty. therefore, that point also cannot be allowed to be raised for the first time in these appeals.

(25) We may also state that no dispute has been raised in these appeals on behalf of the defendant as regards the quantum of damages and there is no doubt that if the plaintiffs in these appeals had established that s. 8 of the Bombay Act was not operative, they would have been entitled to the amounts claimed by them respectively in the three suits, and in fact decreed in Suits Nos. 75 and 93 of 1953.

(26) The result is that we must hold that in all these appeals the plaintiffs' contracts are illegal by virtue of the provision of S. 8 of the Bombay Act and plaintiffs will not be entitled to any damages from the defendant on the basis of these contracts. We must, therefore, dismiss First Appeal No. 380 of 1955. First Appeal No. 561 of 1955 and First Appeal No. 562 of 1955 will be allowed, the decrees passed by the trial court will be set aside and the plaintiff's suits will be dismissed.

(27) As regards costs, there is no doubt whatever that the plaintiffs and the

defendant in all the suits have entered into contracts after the prohibition under the Cotton Control Order, 1950, was relaxed and forward contracts were permitted by the Textile Commissioner in July 1953. Both plaintiffs as well as defendant were the holders of a valid licence under the Cotton Control Order, 1950. The contracts were entered into without reference to the bye-laws of the East India Cotton Association, possibly because both the parties were under a bonafide impression that S. 8 would be inoperative in view of the notification. Despite this, the defendant who is common in all these suits, has chosen to resist these suits for damages on a legal ground which undoubtedly he was entitled to do. The points raised in these appeals involve important points of law and it cannot be said that First Appeal No.380 of 1955 filed by the plaintiff was not justified. Taking into consideration the circumstances of this case, we feel that it would be just and proper to order that the parties should bear their own costs throughout in all these appeals. (28) Order accordingly.