

(1995) 03 GUJ CK 0036
In the Gujarat High Court

Case No : Criminal Revision Application No. 338 of 1994

Kishorbhai Khamanchand Goyal

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Factories Act, 1948 — Section 11, 12, 2, 26, 3

Citation : (1996) 1 GLR 692 : (1996) 2 LLJ 943

Hon'ble Judges : S.M. Soni, J

Bench : Single Bench

Judgement

S.M. Soni, J.—Criminal Case No. 99 of 1988 came to be filed by Shop Inspector, Jetpur Nagarpalika, Jetpur against the present applicant for breach of the provisions of the Bombay Shops and Establishments Act, 1948 ("the State Act" for short). The breach alleged was that the registration of the firm is not renewed, muster roll is not maintained; earned leave card or register is not maintained; board showing Sunday as weekly holiday is to exhibited and also precise provisions of the State Act are not exhibited. The applicant-accused pleaded not guilty and the learned Judicial Magistrate First Class after hearing the parties held the accused guilty, of the alleged offences and imposed fine of Rs. 25/- on each count and in default two days simple imprisonment by his judgment and order of 12-3-1992. The applicant accused being aggrieved by the same preferred an appeal no. 19 of 1992 which was heard and decided by the Additional Sessions Judge, Gondal on 12-5-1992 who by his judgment and order confirmed the order of the trial Court. Against the said judgment and order present revision application is filed.

2. Learned Advocate Mr. Gadhia appearing for the applicant contended before this Court that initially the State Act was applicable. However, with effect from 1-3-1963, the Motor Transport Workers Act, 1961 (The Central Act, for short) has also become applicable to Jetpur Nagarpalika. In view of this fact, he contended that the State Act stands repealed and the Central Act prevails. He therefore,

contended that the conviction under the provisions of the State Act is bad, as the State Act stood repealed in view of the fact of coming into operation of the Central Act. Mr. Gadhia, however, contended that as soon as the Central Act comes into force for identical provisions the State Act impliedly stands repealed. He therefore, contended that on coming into operation of the Central Act, the State Act stood repealed and the conviction based on the repealed Act is bad in law. He, therefore, contended that the judgments and orders of both the Courts below are illegal and should be set aside.

3. Mr. Trivedi, learned Advocate appearing for respondent No. 2 Nagarpalika and Mr. D. N. Patel, learned Assistant public prosecutor appearing for the State contended that in absence of any specific provision in the Central Act to repeal the State Act, the State Act does not automatically and in particular impliedly stand repealed. They contended that if the provisions of the State Act are inconsistent or in contradiction to the provisions of the Central Act, then it can be said that the State Act stands impliedly repealed on the principles of interpretation of statutes. They contended that none of the provisions of the State Act are conflicting with the provisions of the Central Act. On the contrary, some of the provisions of the State Act which are more beneficial are not there in the Central Act. They also contended that if the contention of the learned Advocate Mr. Gadhia is accepted then these beneficial provisions provided in the State Act and which are not provided in the Central Act will also go away as the workmen will be deprived of these beneficial legislation at least to that extent. Mr. Gadhia in reply to this contended that there are some provisions in the Central Act which are more beneficial to the workmen than one provided in the State Act. Mr. Gadhia, therefore, contended that the Central Act should prevail over the State Act. Mr. Trivedi and Mr. Patel contended that if both the Acts remain in force they are not serving any conflicting interest of the workmen and workmen may get benefit under both the Acts. In view of this fact, they contended that this Court should not interfere with the orders passed by both the Courts.

4. Mr. Gadhia, learned Advocate appearing for the applicant firstly relied on a judgment in the case of Corporation of the City of Nagpur through Shop Inspector v. M/s Inland Carriers, Nagpur & Anr. reported in 1987 LLJ 271. The Bombay High Court relying on the judgments in the case of Bihar State Road Transport Corporation Vs. Orang Bahadur and Another, and Amarnath Singh Vs. Presiding Officer, Industrial Tribunal and Others, held as under :

"13. Now, the Central Act does not in express terms repeal the Local or State Acts. The question therefore, is whether a repeal by necessary implication can be inferred, Whether a statute is repealed by implication either in its entirety or in part has to be gathered from the intent of the legislature which the Court can ascertain from the terms and provisions of the later enactment. True it is that ordinarily the presumption is against the intention of the legislature to repeal by mere implication. If however, the provisions of the two enactments are sharply

conflicting, are inconsistent or repugnant that by itself may reveal and intent to repeal the existing law. Again, if the inconsistency relates to a part of the statute only, that part of the statute only would stand repealed to the extent of repugnancy. Where a later or new legislation substantially replaces or makes a complete substitute for the existing law implied repeal can be inferred. As can be seen on a comparative study of the Central and the State Act, though the provisions of the Central Act may not be identical they substantially provide for the same matters covered by the State Act, so far as the welfare of the Motor Transport Workers is concerned which is the object of the Central Legislation.

14. x x x x x

15. x x x x x

16. x x x x x

17. x x x x x x

18. x x x x x x

19. Now, Section 37 of the Central Act which deals with the effect of laws and agreements inconsistent with the provisions of that Act, reads thus :

37. 1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act.

Provided that where under any such award, agreement, contract of service or otherwise a motor transport worker is entitled to benefits in respects of any matter which are more favourable to him than those to which he would be entitled under this Act, the motor transport worker shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

2) Nothing contained in this Act shall be construed as precluding any motor transport worker from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

20. The sub-clause (1) in the first place, makes it clear that the provisions of this Act shall prevail in suppression of anything inconsistent contained in any other law or award or agreement or contract of service. What is saved by the proviso, however, is that a motor transport worker if he is entitled to more favourable benefits in respect of any matter under any award or agreement or contract of service or otherwise, has shall continue to derive that benefit and said benefit shall not be denied to him on the ground that he receives benefits in respect of other matters under this Act. So also it would be open to a motor transport worker to enter into an agreement with his employer claiming more favourable terms, rights or privileges than those to which he is entitled under this Act.

21. In my opinion, therefore, the Central Act which applies to every motor transport undertaking is enacted to provide for the welfare of the motor transport workers employed in such undertakings. A motor transport undertaking is required to be registered as such u/s 3 of the Central Act. The employees of such an undertaking who may be employed in a factory or in a shop or other commercial establishment are not motor transport workers within the meaning of the definition given in Section 2(h) of the Act and they would continue to be governed by the provisions of the Factories Act or any other law in force regulating the conditions of service of persons employed in shops or commercial establishments. So far as the present respondent No. 1 is concerned, transport of goods is its sole concern and business and as an employer of fifteen motor transport workers, it would be governed by the provisions of the Central Act. Respectfully agreeing, therefore, with the view of the Full Bench of the Patna High Court, I find that the Motor Transport Workers Act, 1961 by implication repeals the State Act".

The Bombay High Court had in mind the ordinary principles of interpretation of statutes that ordinarily the presumption is against the intention of the legislature to repeal by mere implication. It had also in mind that if the provisions of two enactment are sharply conflicting or inconsistent or repugnant, that by itself may reveal the intent to repeal the existing law. Therefore, true test to decide whether the Central Act has repealed the State Act would be to find out whether the two enactments tent or are repugnant. If that be so then inspite of the fact of absence of repealing provision, it can be held that the Act impliedly stands repealed to that extent. Mr. Gadhia, learned Advocate drew my attention to Chapter IV of the Central Act. Chapter IV provides for welfare and health of the workers of transport undertakings. Section 8 provides for canteens, Section 9 provides for rest rooms, Sec. 10 provides for uniforms, Section 11 provides for medical facilities and Section 12 provides for first-aid facilities under that chapter. Mr. Gadhia contended that such provisions are absent in the State Act.

Absence of some provision in another Act does not amount to conflicting provision or inconsistent provision amounting to or leading to repugnancy of such provision. He also contended that Section 26 also provides for extra wages for overtime which is double than the ordinary rate of wages, while under the State Act it is only one and half times. Simply because some provisions provided in the Central Act are more beneficial to the workman does not mean that they are conflicting or inconsistent or acting repugnant to the existing provisions. Learned Advocates Mr. Trivedi and Mr. Patel contended that in the State Act provisions are there for leave and employment of women. Provisions pertaining to leave in the State Act are more beneficial than the one provided in the Central Act. In the Central Act, there is no provision pertaining to employment of women. Provisions pertaining to leave and employment of women in the State Act cannot be said inconsistent or conflicting leading to any repugnancy of any existing provision. On the contrary, if both the legislations are made applicable which are for the welfare of the workmen, workmen will be getting the best from the two and it

will serve better the welfare of the workmen than holding that one stands repealed by the other.

5. Section 37 of Chapter IX of the Central Act provides for effect of laws and agreements inconsistent with this Act, which reads as under :

"37. Effect of laws and agreements inconsistent with this Act. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service whether made before or after the commencement of this Act :

Provided that where under any such award, agreement, contract of service or otherwise a motor transport worker is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the motor transport worker shall continue to be entitled to the more favourable benefits in respect of that matter notwithstanding that he receives benefits in respect of other matters under this Act.

2) Nothing contained in this Act shall be construed as precluding any motor transport worker from entering into an agreement with an employer for granting him rights or privileges in respects of any matter which are more favourable to him than those to which he would be entitled under this Act". None of the provisions of the said Act can be said to be inconsistent with the, provisions of the Central Act. If both the Acts are made applicable it will serve workmen the best. They will have a choice to elect the benefits of either of the Acts which according to them may be more beneficial to them.

6. Mr. Gadhia has relied on judgment in the case of Bihar State Road Transport Corporation Vs. Orang Bahadur and Another, . There the Division Bench has held that the State Act stands impliedly repealed by the Central Act. There the State Act is not identical with the one of the present case. The Bihar Shops and Establishment Act did not provide for the jurisdiction of the Labour Court to entertain an application under that Act. There was a special enactment to approach the Labour Court. Here in the instant case, the Bombay Shops and Establishments Act does not bar the jurisdiction of the Labour Court to entertain an application under the State Act. Therefore, that Patna judgment in my opinion cannot be said to be relevant for deciding the issue involved in the present case. Mr. Gadhia also relied on a judgment in case of S. K. Agarwal v. Asst. Inspector of Labour, Hyderabad and Ors. (42 FJR 332). In the case of S. K. Agarwal (supra), the petitioner did not get its concern registered under either the Acts and therefore the question whether under which Act his concern was required to be registered and the Court while considering the provisions of the Central as well as State legislation directed that his concern be registered under the Central Act. There, also the Court relying on Amamathsingh (supra) and Anamalais Bus Transport Private Ltd., Chalakudi Vs. D. Ramakrishna Pillai and Another, held that in view of the provisions of Section 37 the petitioner need not go for registration under the said Act. From this judgment, it can be said that the

Court had not decided as to whether the State Act will be not applicable to the petitioner there. Therefore, in my opinion, this judgment also is of no assistance to the applicant.

7. In view of the above discussion, when the provision in both the Acts are neither inconsistent nor repugnant, there is no question of repeal of the existing State Act. On the contrary, as referred above, if both the Acts are made applicable it will serve workmen the best as the benefits which are not made available to them in the Central Act are made available to them in the State Act and the benefits which are not made available to them in the State Act are made available in the Central Act. By repeal of one, the benefits under the repealed Act stand withdrawn and as such benefits are not in provided in the existing Act, the workman on the contrary by repeal will be deprived of such benefits. Both the Acts are enacted for the benefit and well being of workmen. I am, therefore, unable to agree with the view taken by Bombay High Court in the case of Corporation of the City of Nagpur (supra), Patna High Court in the case of Bihar State Road Transport Corporation (supra) and Andhra Pradesh High Court in the case of S. K. Agarwal (supra).

8. In the result, the application fails and is dismissed.