

(1981) 08 CAL CK 0007

In the Calcutta High Court

Case No : F.M.A.T. No's. 1990 and 1991 of 1979

Manick Sahana

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-08-1981

Acts Referred:

Constitution of India, 1950 — Article 254(2)

General Clauses Act, 1897 — Section 6

West Bengal Rice Milling Industry (Regulation) (Amendment) Act, 1958 — Section 5, 6, 6A, 6A(3), 6A(5)

Citation : AIR 1981 Cal 289 : 85 CWN 1117

Hon'ble Judges : M.M. Dutt, J;A.K. Sarkar, J

Bench : Division Bench

Advocate : S.C. Bose and Ramapati Roy, for the Appellant;A.P. Chatterjee and S.C. Ukil, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—The appellant Manick Sahana has, in this appeal, challenged the propriety of the judgment of Basak J. discharging the Rule Nisi issued on the application of the appellant under Article 226 of the Constitution.

2. In the Writ Petition, the appellant challenged the validity of the provisions of Sections 5, 6, 7 and 8 of the Rice-Milling Industry (Regulation) Act, 1958, hereinafter referred to as the Rice-Milling Act, which is a Central Act. The Rice-Milling Act was passed by Parliament on May 18, 1958 for the purpose of regulating the Rice-Milling Industry in the interest of the general public. Section 2 of the Rice-Milling Act contains a declaration as to the expediency of control by the Union of the Rice-Milling Industry, Section 3 is the definition section. Clause (a) of Section 3 defines a defunct rice mill as meaning, inter alia, a rice mill in existence at the commencement of the Rice-Milling Act in which rice milling operations have not been carried on for a continuous period of one year prior to such commencement, and a rice mill whether established before or after the commencement of the Rice-Milling Act in which the rice milling operations have

not been carried on for a continuous period of one year after the commencement of the Rice-Milling Industry (Regulation) Amendment Act, 1968. Clause (b) of Section 3 defines "existing rice mill" as meaning a rice mill carrying on rice milling operations at the commencement of the Rice-Milling Act, and includes a rice mill in existence at such commencement which is not carrying on rice milling operations but in which rice milling operations have been carried on at any time within a period of one year prior to such commencement, Under Clause (e) of Section 3, "new rice mill" means a rice mill other than an existing rice mill or a defunct rice mill. u/s 3A which was incorporated in the Rice-Milling Act by the Rice-Milling Industry (Regulation) Amendment Act, 1968, the provisions of the Rice-Milling Act have been made applicable to rice-hullers. Section 4 provides for the appointment of licensing officers. Section 5 provides for grant of permits in respect of defunct rice mills and the establishment of new rice mills. Section 6 provides as follows:

"6. (1). Any owner of an existing rice mill or of a rice mill in respect of which a permit granted u/s 5 is effective may make an application to the licensing officer for the grant of a licence for carrying on rice milling operation in that rice mill.

(2) Every application under Sub-section (1) shall be made in the prescribed form and shall contain the particulars regarding the location of the rice mill, the size and type thereof and such other particulars as may be prescribed,

(3) On receipt of any such application for the grant of a licence, the licensing officer shall grant the licence on such conditions including such conditions as to improvements to existing machinery, replacement of existing machinery and use of improved methods of rice-milling, as may be necessary to eliminate waste, obtain maximum production and improve quality and conditions relating to the polishing of rice, on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed,

(4) A licence granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions (including such conditions as to improvements to existing machinery, replacement of existing machinery and use of improved methods of rice milling, as may be necessary to eliminate waste, obtain maximum production and improve quality) as may be prescribed:

Provided that if in a mill in respect of which a licence has been granted under Sub-section (3) rice milling operations are not carried on for a continuous period of one year at any time after the commencement of the Rice-Milling Industry (Regulation) Amendment Act, 1968, then, such licence shall cease to be valid upon the expiry of the said period of one year and a fresh licence shall be necessary for carrying of rice milling operations in that mill."

Section 7 lays down the circumstances under which licences may be revoked, suspended and amended. Sub-section (1) of Section 8 enjoins that no person or authority shall after the commencement of the Rice-Milling Act establish any new

rice mill except under and in accordance with a permit granted u/s 5. Under Sub-section (2) of Section 8, no owner of a rice mill shall, after the commencement of the Rice-Milling Act, carry on rice milling operation except under and in accordance with a licence granted under S. C.

3. The West Bengal State Legislature passed an Act, namely, the Rice-Milling Industry (Regulation) (West Bengal Second Amendment) Act, 1974, hereinafter referred to as the W. B. Amendment Act of 1974. By the W. B. Amendment Act of 1974, the Rice-Milling Act was amended by the introduction thereto of a new section, being Section 6A. The W. B. Amendment Act of 1974 was passed in accordance with the provision of Art, 254(2) of the Constitution with the assent of the President of India. Section 6A provides as follows:

"6A. Licence for husking mill.-- (1) Notwithstanding anything to the contrary contained in this Act, every owner of a husking mill, whether he holds licence under this Act or not, shall within thirty days from the date of coming into force of the Rice-Milling Industry (Regulation) (West Bengal Second Amendment) Ordinance, 1974 (West Bengal Ord. XIV of 1974), or in the case of an owner of a new husking mill, before he starts actual milling operation, shall make an application to the licensing officer for the grant of a fresh licence for carrying on rice-milling operation in that husking mill:

Provided ,that the licensing officer may. tor good or sufficient reason being shown, extend the time for making such application for a further period of thirty days.

(2) Every application under Sub-section (1) shall be made in such form, be accompanied by such fee and shall contain such particulars as may be specified by the State Government by notification in this behalf hereafter.

(3) A licence granted by the licensing officer on application made under this section shall be subject to the following conditions, namely:--

(a) that the licensee shall recover from every customer not less than sixty per cent, of the charges for milling rice, in kind, that is, in rice,

(b) that the licensee shall deliver to the State Government seven tonnes, in the case of a husking mill which is fitted with a No. 2 type of huller and in any other case, five tonnes of rice of fair average quality within the thirtieth day of April every year, at such price as may be fixed by the State Government under any law for the time being in force, and

(c) such other conditions, if any, as the State Government may, by notification specify.

(4) The form of the licence and the manner in which the licensing officer shall grant the same shall be such as may be specified by the State Government by notification issued in this behalf.

(5) A licence granted to an owner of a husking mill before the coming into force

of the Rice-Milling Industry (Regulation) (W. B. Second Amendment) Ordinance 1974 (W. B. Ordn. XIV of 1974), shall lapse-

(i) if the owner does not apply for a fresh licence within the time specified under Sub-section (1),

(ii) on the issue of a fresh licence by the licensing officer under Sub-section (3), or

(iii) if a fresh licence under the provisions of this section is not granted,

(6) Matters which have not been provided for in this section, but which are provided elsewhere in this Act or in the rules framed thereunder shall mutatis mutandis apply to a licence granted under this section.

Explanation.-- A "Husking Mill" is a rice mill which undertakes rice-milling operation on customer's account only."

4. Section 6A was omitted from the Rice-Milling Act with retrospective effect by the West Bengal Ordinance No. 15 of 1977 which was replaced by the Rice-Mining Industry (Regulation) (W. B. Amendment) Act, 1977, hereinafter referred to as the W. B. Amendment Act of 1977. Sections 3 and 4 of the W. B. Amendment Act of 1977 are as follows:--

"3. Omission of Section 6A of Act 21 of 1958-- Section 6A of the said Act shall be, and shall be deemed always to have been omitted.

4. Savings-- Omission of Section 6A of the said Act by Section 3 shall not affect the validity of any act done or omitted to be done under the said Section 6A and no suit, prosecution or other legal proceeding shall lie against any person for any act done or omitted to be done under the said Section 6 A."

5. The appellant is the owner of a husking mill and he has been operating the same without any licence. The contention of the appellant is that the provision of Section 6A introduced into the Rice-Milling Act by the W. B. Amendment Act of 1974 was repugnant to and inconsistent with the provisions of Sections 5, 6, 7 and 8 of the Rice-Milling Act and that, accordingly, after the introduction of S. 6A the said provisions of the Rice-Milling Act became void and did not revive after the omission of S. 6A by the W. B. Amendment Act of 1977. Alternatively, it is contended that Section 6A impliedly repealed the provisions of Sections 5, 6, 7 and 8 and the omission of Section 6A did not revive the said provisions. It is submitted on behalf of the appellant that in view of the fact that Sections 5, 6, 7 and 8 of the Rice-Milling Act stand abrogated or repealed, there is no law which prohibits a person from carrying on rice-milling operations in a husking mill. The appellant is, therefore, entitled to carry on rice-milling operations without any permit or licence as required under Sections 5 and 6 of the Rice-Milling Act, the said provisions not being in existence.

6. The first question we have to consider is, whether Section 6A is repugnant to or inconsistent with the provisions of Ss. 5, 6, 7 and 8 of the Rice-Milling Act.

Section 6A is a provision for grant of a licence for a husking mill which is a rice mill under the explanation to the section. Section 5 of the Rice-Milling Act, on the other hand, is the provision for grant of a permit for the establishment of a new rice mill or for recommencing rice-milling operation in a defunct rice mill. The scheme of the Rice-Milling Act is that no one can establish a new rice mill or recommence rice-milling operation in a defunct rice mill without a permit and after the establishment of a new rice mill a licence has to be obtained for rice milling operations. Section 6A relates only to the grant of licence for rice-milling operations. So there is no inconsistency between the provision of Section 5 and Section 6A, each dealing with a different matter, namely, Section 5 deals with grant of permits and Section 6A for the grant of licences for rice-milling operations.

7. Section 6 (1) of the Rice-Milling Act provides for the grant of licence for rice-milling operations in an existing rice mill or a rice mill in respect of which a permit has been granted u/s 5. Section 6 (1) cannot, therefore, be said to be contrary to or inconsistent with Section 6A which also requires that a licence has to be obtained for rice-milling operation. Sub-sec, (2) of Section 6 requires that an application under Sub-section (1) shall be made in the prescribed form and shall contain certain particulars as may be prescribed. The application which has to be made under Sub-section (2) of Section 6A has also to be made in such form containing such particulars as may be specified by the State Government. The particulars which have been prescribed under Sub-section (2) of Section 6 and those specified by the State Government under Sub-section (2) of Section 6A are more or less the same. There is, therefore, no inconsistency between Sub-section (2) of Section 6 and Sub-section (2) of Section 6A.

8. Sub-section (3) of Section 6 lays down the conditions of grant of licence. On the other hand, under Sub-section (3) of Section 6A, the conditions that are required to be fulfilled are completely different from the conditions that are laid down in Sub-section (3) of Section 6. In this connection, we may refer to Sub-section (6) of Section 6A which provides that matters which have not been provided for in Section 6A, but which are provided elsewhere in the Rice-Milling Act or in the rules framed thereunder shall *mutatis mutandis* apply to a licence granted u/s 6A. The combined effect of Sub-section (3) and Sub-section (6) of Section 6A is that in addition to the conditions required to be fulfilled under Sub-section (3) of Section 6, the conditions mentioned in Sub-section (3) of Section 6A have also to be fulfilled. Considered from this point of view, it is difficult to say that Sub-section (3) of Section 6A is repugnant to Sub-section (3) of Section 6. Sub-section (4) of Section 6 provides for the renewal of a licence. None of the sub-sections of Section 6-A provides for the renewal of a licence. In view of Sub-section (6) of Section 6A, sub-section (4) of Section 6 will apply *mutatis mutandis*. Thus we find that Section 6A is not repugnant to or inconsistent with Section 6. If Section 6 is not repugnant to Section 6A, there is no question of repugnancy between Section 6A on the one hand and Sections 7 and 8 on the other. Therefore, the basis of the contention of the appellant is gone.

9. Our attention has been drawn on behalf of the appellant to Sub-section (5) of Section 6A which, inter alia, provides that the licence granted under the Rice-Milling Act before the W. B. Ordinance No. 1"4 of 1974 shall lapse under certain circumstances as specified in Clauses (i), (ii) and (iii) of Sub-section (5). It is submitted that as Sub-section (5) cancels the licenses issued under the Rice-Milling Act before the introduction of Section 6A, Section 6A should be held to be repugnant to the provision of Section 6 of the Rice-Milling Act under which such licenses were granted. We are unable to accept the contention. The object of Sub-section (5) is quite in accordance with the grant of a licence under Sub-section (3) of Section 6A. After a licence under Sub-section (3) is granted or if no such licence is granted or no application for the grant of such a licence is made, the licence granted u/s 6 of the Rice-Milling Act will lapse. Sub-section (5), in our opinion, is an addition to Section 6 and not contrary to or inconsistent with that section. If a State Act makes certain additions to a Central Act, the State Act having been passed in accordance with Article 254(2) of the Constitution, and such additions providing for compliance with certain conditions, there can be no question of repugnancy or inconsistency between the State Act and the Central Act. The discussions which we have made above show that Section 6A has, in effect, made certain additions to the Rice-Milling Act relating to the grant of licence, and on this ground also we hold that there is no repugnancy between Section 6A and the other provisions of the Rice-Milling Act.

10. As much arguments have been made as to the interpretation of Article 254(2) of the Constitution and as to the question of implied repeal, we may proceed on the assumption that Section 6A is repugnant to the provisions of Sections 5, 6, 7 and 8. On this assumption, the question which we are to consider is whether there was an implied repeal of the said provisions of Sections 5, 6, 7 and 8 by Section 6A and whether after the omission of Section 6A by the W. B. Amendment Act of 1977 with retrospective effect, there has been revival of the repealed provisions.

11. Mr. Somendra Chandra Bose, learned counsel appearing on behalf of the appellant, submits that after the introduction of Section 6A, the provisions of Sections 5, 6, 7 and 8 of the Central Act, that is, the Rice-Milling Act, became void. Article 254 of the Constitution is as follows:

"254. (1) If any provisions of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the concurrent List, then, subject to the provisions of Clause (2) the law made by Parliament whether passed before or after the law made by 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.

(2) Where a law made by the Legislature of a State * * * with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant

to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State." it is not disputed that Section 6A was enacted under Item 33 of the Concurrent List with the assent of the President of India in accordance with Article 254(2) of the Constitution. On the assumption that Section 6A is repugnant to the provisions of Sections 5, 6, 7 and 8 of the Rice-Milling Act passed by Parliament, it is apparent that as Section 6A was passed in accordance with Art. 254(2), Section 6A will prevail in the State of West Bengal to the extent of the repugnancy. Article 254(2) does not say that the Central Act will become void. The position, therefore, in our opinion, is that Section 6A will prevail and the provisions of the Rice-Milling Act which are repugnant to Section 6A will not be enforceable in the State of West Bengal. Under Clause (1) of Article 254, the State Act, if it is repugnant to the Central Act, will be void, but under Clause (2) of Art. 254, the word "void" is absent. All that has been provided in Clause (2) is that the State Act will prevail to the extent of the repugnancy in that State. It is, therefore, obvious that it is not the intention of Parliament that when a law is passed by a State under Article 254(2) which is repugnant to the law passed by Parliament, the latter will be "void" to the extent of the repugnancy. When a law is said to be void, it may be regarded as still born or is wiped out from the Statute Book. Such a situation, in our opinion, cannot arise under Article 254(2), for, though in the State concerned the State law will prevail to the extent of the repugnancy, the law passed by Parliament will remain operative in other States.

12. The learned counsel for the appellant, however, has placed strong reliance on a decision of the Supreme Court in *M. Karunanidhi Vs. Union of India and Another*, where Fazal AH J. speaking for the Court observed as follows (at p. 898):--

"1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where, however, a law passed by the State comes into collusion with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with Clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List trenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the

doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential. 4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

13. Para. 2 of the said observation has been relied upon by the learned counsel for the appellant in support of his contention that the provisions of the Central Act would become void. If we confine ourselves only to para. 2 of the said observation, it must be said that the said observation supports the contention of the learned counsel. But in para. 4 of the said observation, it is not stated that the provisions of the law passed by Parliament would become void. We do not think that in using the word "void" in para. 2 of the observation the Supreme Court meant the same in the strict literal or legal sense of the word. Reading paras. 2 and 4 together, what was meant by the Supreme Court was that the provisions of law made by Parliament would be unenforceable in the State concerned. The said decision of the Supreme Court is, therefore, of no help to the appellant.

14. Next, we may consider the question of implied repeal of the provision of Sections 5, 6, 7 and 8 by Section 6A of the Rice-Milling Act. In our opinion, it is doubtful whether one provision of a statute can be said to repeal by implication another provision of the same statute. It is the golden rule of construction that the Court should try to reconcile two provisions of a statute which are apparently inconsistent with each other. We have already held that Section 6A is not inconsistent with any of the said provisions of the Rice-Milling Act and, as such, the question of implied repeal does not arise. But even assuming that there has been an implied repeal of the said provisions by Section 6A, let us consider whether the repealed provisions have revived after the omission of Section 6A from the Rice-Milling Act. In this connection, it will be profitable to refer to the following statement of the law in Maxwell's Interpretation of Statutes, 12th Edn., pp. 19-20;

"Where an Act is repealed and the repealing enactment is then repealed by another, which manifests no intention that the original Act shall continue repealed, the common law rule was that the repeal of the second Act revived the first ab initio.....

The common law on the point was altered in 1850, by a provision now to be found in Section 11 (1) of the Interpretation Act, 1889: Where an Act passed

after 1850 "repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment."

Thus it appears that under the common law rule, in the absence of any intention that original Act shall continue repealed, the repeal of the repealing Act would revive the original Act. The W. B. Amendment Act of 1974 which amended the Rice-Milling Act and introduced S. 6A thereto did not express any intention that the repealed provisions of Sections 5, 6, 7 and 8 (assuming that these provisions were impliedly repealed) would continue repealed. If it is taken that the principles of law contained in Section 11 (1) of the Interpretation Act, 1889 is also applicable to our country, we are of the view that the W. B. Amendment Act of 1977, which omitted Section 6A with retrospective effect, by necessary implication contains an intention that the repealed provisions of the Rice-Milling Act (if those have been repealed at all) would revive. It has been noticed that Section 3 of the W. B. Amendment Act of 1977 provides that Section 6A of the Rice-Milling Act shall be, and shall be deemed always to have been, omitted. If the intention of the legislature was that the repealed provisions would continue to be repealed, in that case, it was not necessary for the legislature to omit Section 6A with retrospective effect. The fact that Section 6A has been omitted with retrospective effect, that is to say, from the date of its enactment, clearly evinces an intention of the legislature that the said provisions of the Rice-Milling Act would revive. In the circumstances, we hold that-even assuming that Section 6A had repealed the provisions of Sections 5, 6, 7 and 8 of the Rice-Milling Act, after the omission of Section 6A from the Rice-Milling Act with retrospective effect, revived the said provisions. As already stated, the question of repeal does not arise in view of our finding that Section 6A was not repugnant to any other provision of the Rice-Milling Act.

15. In this connection, we may refer to a decision of the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, where one of the questions that was considered by the Supreme Court was whether Section 6 of the Essential Supplies (Temporary Powers) Act, 1946, which contained a non obstante clause, had repealed the preexisting laws, Section 6 was as follows:--

"Any order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act." In that case, Mahajan C.J. observed as follows (at p, 469):--

"In our opinion the construction placed on Section 6 by the High Court is not right. Section 6 does not either expressly or by implication repeal any of the provisions of the pre-existing laws; neither does it abrogate them. Those laws remain untouched and unaffected so far as the statute book is concerned. The repeal of a statute means as if the repealed statute was never on the statute book. It is wiped out from the statute book. The effect of Section 6 certainly is not to repeal any one of these laws or abrogate them. Its object is simply to by-

pass them where they are inconsistent with the provisions of the Essential Supplies (Temporary Powers) Act, 1946, or the orders made thereunder. In other words, the orders made u/s 3 would be operative in regard to the essential commodity covered by the Textile Central Order wherever there is repugnancy in this Order with the existing laws and to that extent the existing laws with regard to these commodities will not operate, Bypassing a certain law does not necessarily amount to repeal or abrogation of that law. That law remains un repealed but during the continuance of the Order made u/s 3 it does not operate in that field for the time being. The ambit of its operation is thus limited without there being any repeal of any one of its provisions."

16. The above principle of law laid down by the Supreme Court will also apply to the instant case. Even if Section 6A Is repugnant to the said provisions of the Rice-Milling Act, it does not repeal those provisions, but it merely by-passes them. During the continuance of Section 6A, these provisions remained inoperative and became operative and enforceable after the omission of Section 6A. No other point has been urged on behalf of the appellant.

17. For the reasons aforesaid, the judgment of Basak J. is affirmed and this appeal is dismissed. In view, however, of the facts and circumstances of the case, there will be no order for costs.

18. The operation of this judgment will remain stayed in respect of the appellant only for a period of three weeks from dates as prayed for on behalf of the appellant.

A.K. Sarkar, J.

19. I agree.