

(2011) 06 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No's. 1949 and 7558 of 2010

S. Gunasekaran and K. M. Ramesh Secretary, Labour Law
Practitioners' Association

APPELLANT

Vs

The Government of Tamil Nadu
R. Chandaran Vs The
Presiding Officer, Labour Court and The Management of
Lower Kothagiri Industrial Cooperative Tea Factory

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 21
Industrial Disputes (Tamil Nadu Amendment) Act, 2008 — Section 1(3), 7
Industrial Disputes Act, 1947 — Section 2

Citation : (2011) 4 CTC 118 : (2011) 6 MLJ 865

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Balan Haridoss, in W.P. No. 1949 of 2010 and G.B. Saravana Bhavan, in W.P. No. 7558 of 2010, for the Appellant; Senthilkumar, AGP and R. Murali, GA for RR1 and 2 in W.P. No. 1949 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—These two writ petitions came to be posted before this Court on being specially ordered by the Hon''ble Chief Justice vide

his order dated 13.4.2010.

2. In the first writ petition, the first Petitioner is the workmen, who was an employee of Tamil Nadu Civil Service Corporation and covered by the

Award in I.D. No. 359 of 1979 passed by the Labour Court, which was upheld by this Court in the writ petition as well as in a writ appeal. He

sought for the execution of the Award by filing an application u/s 11B of the Industrial Disputes Act on 08.12.2009. Since the Labour Court do

not have any infrastructure pursuant to the State amendment to the Industrial Disputes Act, the second Petitioner Association took up the cause

and filed the first writ petition seeking for a direction to first and second Respondents to create sufficient infrastructure for the effective

implementation of the Award or order passed by the Labour Court and Industrial Tribunal as per Section 11B of the I.D. Act introduced by Tamil

Nadu Act 45/2008 with effect from 7.11.2008 within a time frame. In that writ petition, notice of motion was ordered on 03.12.2010.

3. In the meanwhile, the second writ petition came to be filed. The Petitioner in that writ petition is a workman covered by I.D. No. 484 of 1999,

dated 8.7.2002, wherein and by which he was given the relief of reinstatement with service continuity but without backwages. Since the said award

was not implemented, he filed a petition u/s 33C(2) of the ID Act being C.P. No. 509 of 2003 before the Labour Court, Coimbatore. In that

computation petition, the Labour Court had computed a sum of Rs. 83,329/- as due and payable to the Petitioner. It was at that stage, the Tamil

Nadu Act 45 of 2008 was enacted, wherein the Labour Courts were specifically empowered with power to execute its own award as a decree of

the civil court by introducing Section 11B of the ID Act. The said amendment was brought into force with effect from 07.11.2008. Therefore, the

Petitioner filed an execution petition before the Labour Court in an unnumbered E.P. in the year 2009. The Presiding Officer of the Labour Court

had returned the papers by stating that there were no Government orders issued granting the power to the Labour Court. Even though the

Petitioner several times represented his petition, the Labour Court repeatedly returned the application by stating that since no Government order

was issued, the application cannot be taken on file. It was a rather unfortunate situation made by the Labour Court which forced the Petitioner to

come to this Court seeking for a direction to the Labour Court to entertain his execution petition filed u/s 11B of the Act and to deal with the same.

When that writ petition came up on 15.4.2010, it was directed to be posted along with the first writ petition.

4. Since the issue involved in both the writ petitions are common, they were heard together. It must be noted that the Industrial Disputes Act, 1947

(Central Act 14/1947) was enacted with effect from 11.3.1947. The Act was intended to make provisions for investigation and settlement of the

industrial disputes and for settling certain other issues. The Labour Courts were created u/s 7 of the said Act for adjudication of disputes relating to

matters specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act. u/s 7A, similarly

Industrial Tribunals were created for the very same purpose and for adjudicating the disputes relating to matters specified in the Second and Third

Schedules and also to perform such other functions as may be assigned to them. The powers of Labour Courts are conferred u/s 11. u/s 11(3), the

Labour Courts and Industrial Tribunals were granted same powers as are vested with the Civil Courts under the Code of Civil Procedure, 1908

when trying the suit in respect of enforcement of attendance of any person, examining witnesses on oath, compelling production of documents and

material objects, issuing commission for examination of witnesses and in respect of other matters as may be prescribed. Normally, the Labour

Court gets its power of adjudication on reference made by an appropriate Government u/s 10(1). But however in the State of Tamil Nadu by the

introduction of Section 2A(2), routing the disputes by getting orders from the State Government was dispensed with and it was enough if the

workmen who is non employed to go before a Conciliation Officer. After the failure of conciliation, if he files the claim statement along with the

failure report it will be considered as a deemed reference of the industrial dispute.

5. After the introduction of Section 2A in the year 1965, number of disputes brought to the Labour Courts have increased by several folds. This

was because an individual dispute need not be sponsored by a trade Union. The workmen have been given power to approach the Labour Courts

directly in case of his non employment. The Labour Court after the adjudication of a dispute passes an Award. Such an Award is published in

terms of Section 17 of the ID Act. Once an Award is published, it becomes operational within 30 days from the date of publication of the Award.

In case, if the employer did not implement the award which is favourable to the workman, two courses are open to the workman. One is to

prosecute the employer u/s 29 of the ID Act or in alternative seek for the computation of monetary benefits arising out of such award in terms of

Section 33C(2) of the I.D. Act. If the award itself quantifies the monetary benefits or after computation of monetary benefits of Award by the

Labour Court u/s 33C(2) of the ID Act, if amounts are not paid by an employer, Section 33C(1) of the ID Act provides for recovery of money

dues by an employer on a certificate issued by the appropriate Government to collect or recover amounts as if it is an arrear of land revenue.

6. Therefore, the Government from the time when the ID Act was enacted was utilizing the power u/s 33C(1) to recover the amounts as an arrear

of land revenue. It involves a cumbersome process. The workmen approaching the State Government for a certificate will have to produce proof

for his monetary entitlement and thereafter, the Government after making an enquiry and giving show cause notice to the employer will issue an

order in the form of the Government Order directing the concerned District Collector to recover the amount. The District Collector concerned

thereafter directs his subordinate Tahsildar in-charge of the Taluk to recover the amount from the concerned employer as arrear of land revenue.

Many occasions, the workmen got dissatisfied with the procedures because subordinate revenue officials never made any effort to recover

amounts earnestly either because the employer was a powerful person in that area or their arms were greased for not taking an action. This had

resulted the workmen approaching this Court by way of proceedings under Article 226 of the Constitution for directing the District Collector to

make efforts to recovery the amount. Thereafter, some efforts were taken by the revenue officials to implement the order of the State Government.

In this process, many times the employer get disappeared from the scene or the properties were altered or alienated.

7. When this Court gave a direction to furnish the number of certificates issued u/s 33C(1), the learned Additional Government Pleader produced

the following details in respect of the certificates issued u/s 33C(1) for the last years which reads as follows:

Sl. No. Year No. of certificates issued

1. 2008 103

2. 2009 88

3. 2010 46

Total 237

8. It was because of the unsatisfactory nature of the execution machinery, the Labour Advisory Board and many trade unions were sought for

conferment of execution power to the Labour Courts themselves. The State Government after accepting such pleas had brought a legislation and

amended the Industrial Dispute Act by Tamil Nadu Act 45 of 2008. The amendment Act reads as follows:

1.(1) This Act may be called the Industrial Disputes (Tamil Nadu Amendment) Act, 2008.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

2. After Section 11A of the Industrial Disputes Act, 1947, the following section shall be inserted, namely:

11B. Power of a Labour Court or Tribunal to execute its award by decree.-A Labour Court or a Tribunal shall have the power of a civil court to

execute its own award as a decree of a civil court and also to execute any settlement as defined in Clause (p) of Section 2 as a decree.

(Emphasis added)

9. The amendment also received the assent of the President of India on 18.09.2008. As required u/s 1(3) of the Amendment Act, the State

Government had issued G.O. Ms. No. 134, Labour and Employment Department, dated 07.11.2008 and notified the amendment. The said

notification was published in the Tamil Nadu Government Gazette Extraordinary in Part II Section 2, dated 7.11.2008. The notification reads as

follows:

In exercise of the powers conferred by Sub-section (3) of Section 1 of the Industrial Disputes (Tamil Nadu Amendment) Act, 2008 (Tamil Nadu

Act 45 of 2008), the Governor of Tamil Nadu hereby appoints the 7th November 2008 as the date on which the said Act shall come into force.

10. Notwithstanding bringing into force of the amendment, the Labour Courts were unable to take up such applications in the absence of necessary

infrastructures, i.e., additional staff required for executing the Award and settlements. Therefore, complaints were received as in the case of the

two writ Petitioners and request for creating infrastructures for the Labour Courts in the State of Tamil Nadu. The following courts are functioning

under Sections 7 and 7A of the Industrial Disputes Act constituted by the State Government.

- i) Industrial Tribunal, Chennai.
- ii) Principal Labour Court, Chennai.
- iii) I Additional Labour Court, Chennai.
- iv) II Additional Labour Court, Chennai.
- v) III Additional Labour Court, Chennai.
- vi) Labour Court, Coimbatore.
- vii) Labour Court, Madurai.
- viii) Labour Court, Salem.
- ix) Labour Court, Tiruchirappalli.
- x) Labour Court, Tirunelveli.
- xi) Labour Court, Cuddalore.
- xii) Labour Court, Vellore
- xiii) Additional Labour Court, Vellore.

Thus there are 12 Labour Courts and one Industrial Tribunal for the 30 Revenue Districts in Tamil Nadu. There is only one Labour Court for each

3 Revenue Districts. By the said amendment, the Labour Court is not only expected to execute its own Awards, but also settlements signed

between the parties. The term "settlement" is defined u/s 2(p) of the I.D. Act which means settlement arrived at in the course of conciliation

proceedings and also the written agreement between the employer and workmen arrived at otherwise than in the course of conciliation

proceedings. Therefore, the Labour Court by amendment is not only expected to execute its Awards and the orders passed u/s 33C(2), but also

settlements between the employer and the workmen either bipartite (Section 18(1)) or tripartite (Section 12(3) read with Section 18(3)). This will

create enormous work for the Labour Courts and without necessary supporting staff, it will be unthinkable that the Labour Court can execute such

execution petitions as required under law.

11. In the first writ petition, the Labour Law Practitioners' Association also sent a representation to the State Government on 21.12.2009.

Therefore, when the matter came up on 16.4.2010, this Court in view of the important issues raised and the urgency pleaded, had directed the

Secretary to the Government, Labour Department, (first and second Respondents

herein) to file a proposal for sanctioning additional staff and infrastructure in view of the introduction of Section 11B. Obviously, the Government did not have an idea about the additional supporting staff and infrastructure required for bringing into force the amendment. Therefore, the Government by its letter dated 22.4.2010 sent a reply. The operative portion of the reply reads as follows:

While the proposal for insertion of a proviso to Section 11B in order to enable the creation of posts of bailiffs to Labour Courts/Industrial

Tribunals, is under the consideration of the Government, the Hon'ble High Court of Madras have issued the direction to file proposal to sanction

additional staff and infrastructure in view of the introduction of Section 11B in the Industrial Disputes Act by Tamil Nadu Amendment Act 45 of

2008 and the consequential Government Order issued in G.O. No. 134, Labour and Employment Department dated 7.11.2008. In this

connection, in compliance with the directions of the High Court, I am to request the Registrar General, High Court to send necessary proposals to

provide one Head Bailiff and a junior Bailiff along with infrastructure to each of the 12 labour courts and Industrial Tribunal functioning in the State

of Tamilnadu, in view of the introduction of Section 11B in the Industrial Disputes by Tamil Nadu Amendment Act 45 of 2008 and the

consequential Government Order issued in G.O. No. 134, Labour and Employment Department dated 7.11.2008 so as to enable the Government

to accord sanction for the same and to comply with the directions of the Honourable High Court of Madras.

(Emphasis added)

12. Thereafter, pursuant to the direction issued by this Court on 16.4.2010, a status report was sent on 22.4.2010. In that report, it was stated as

follows:

In this connection, in compliance with the directions of the High Court, the Government have requested the Registrar General to send necessary

proposals to appoint required number of Bailiffs and to provide infrastructure to labour courts and Industrial Tribunal functioning in the State of

Tamilnadu, in view of the introduction of Section 11B in the Industrial Disputes Act by Tamil Nadu Amendment Act 45 of 2008 and the

consequential Government Order issued in G.O. No. 134, Labour and

Employment Department dated 7.11.2008, so as to enable the

Government to accord sanction for the same and comply with the directions of the Honourable High Court of Madras.

13. Pursuant to the request made by the State Government, the Registrar General of this Court sent a proposal after consulting with the Labour

judiciary giving details of the total number of staff, pay scales as well as expenditure towards recurring as well as non recurring expenditures

including infrastructures and additional accommodation that was required. The operative portion of that letter reads as follows:

I am, therefore, to request that necessary orders of the Government for the sanction of 34 posts along with infrastructure for the creation of

Nazareth establishment to each Labour Courts functioning ie. 8 units in the state of Tamil Nadu, may kindly be obtained and communicated to the

High Court, immediately.

14. After the receipt of the proposal sent by the High Court, the Government had submitted a status report on 6.8.2010. In page 4 of the Status

Report, it was stated as follows:

It is submitted that for the sanction the Non recurring and Recurring expenditure the consent of Finance Department has to be obtained. For

creation 34 posts in each Labour Courts, the consent of Home, Finance and P & AR Department and then the approval of Staff Committee is

required.

After obtaining the consent from both the Advisory Department the file has to be circulated and order in circulation has to be obtained.

As these administrative procedure are mandatory and to followed scrupulously, it will take some more time to finalise the issue. It is submitted that

complying the order of this Hon''ble Court, it will take some more time. Hence, it is just and necessary to grant extension of time to comply fully the

order of this Hon''ble Court.

It is also submitted that if the extension of time is not granted, the Respondents will be put into much hardship.

In view of the facts and circumstances as stated above, it is humbly prayed that this Hon''ble Court may be pleased to grant extension of time for a

period of 3 months to comply with the order dated 16.04.2010 in W.P. No. 1949 of 2010 and thus render justice.

(Emphasis added)

15. Thereafter, the Government sent letters asking for further particulars regarding details of the staff available, existing infrastructure available and

the financial commitments involved. Apparently, these two letters were not signed by the Secretary, but by the Additional Secretary. Even though

in the earlier letters sent and reflected in the status report, all the details were made available, attempts were made to delay the issue intentionally.

The Government had its own reservation about sanctioning such amounts which may work out to Rs. 4.5 Crores per annum with additional

amounts towards creation of infrastructure. However suddenly there was an volte face by the Government. The first Respondent sent a reply dated

02.11.2010 to the Registrar General. The operative portion of the reply found in paragraphs 4 and 5 reads as follows:

4. Now the Government of India, has amended the Industrial Disputes Act 1947, Section 11 as follows.

In Section 11 of the Principal Act, after Sub-section (8), the following Sub-sections shall be inserted, namely:

Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in

accordance with the procedure laid down for execution of orders and decree of a civil court under Order 21 of the Code of Civil Procedure,

1908.

The Labour Court or Tribunal or National Tribunal, as the case may be shall transmit any award, order or settlement to a civil court having

jurisdiction and such civil courts shall execute the award, order or settlements as if it were a decree passed by it

5) In the light of the above amendment made by Government of India, I am directed to request you to offer your opinion to Government urgently.

(Emphasis added)

16. As noted, the Parliament had enacted Central Act 24/2010 and amended the Industrial Disputes Act. Section 7 of the Amending Act reads as

follows:

7. In Section 11 of the principal Act, after Sub-section (8), the following Sub-sections shall be inserted, namely:

(9) Every award made, order issued or settlement arrived at by or before Labour

Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under Order 21 of the Code of Civil Procedure, 1908.

(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

17. The said amendment was brought into force with effect from 15.9.2010 and the same was notified in the Gazette of India, dated 15.09.2010 in

Part II Section 3(ii). Immediately on receipt of the said reply, the Registrar General sent a detailed reply stating that the State amendment continues

to be valid and is in operation. Therefore, the Government should sanction necessary infrastructure so as to make execution machinery attached to

the Labour Court effective. Notwithstanding the request of the High Court, the first Respondent State sent a letter dated 4.2.2011 enclosing a

status report. After setting out the previous history, in paragraph 13, it was stated as follows:

13. ...it is clear that the provisions of Sub-sections (9) and (10) of Section 11 of the Industrial Disputes Act, 1947, as inserted by the Parliament in

Central Act 24 of 2010, shall prevail over the provisions of Section 11B of the said Act, as inserted by Tamil Nadu Act 45 of 2008 and after

coming into force of the said Central Act 24/2010, the Civil Court alone is competent to execute the award, or order or settlement of the Labour

Court or Tribunal. Hence, question of providing any infrastructure for the Labour Court consequent on introduction of Section 11B does not arise.

(Emphasis added)

18. In view of the stand taken by the State, this Court directed the State Government to file a counter affidavit. Accordingly, a counter affidavit,

dated Nil (2011) was filed on behalf of first and second Respondents. The second Petitioner Association also filed an objection statement dated

14.3.2011.

19. In view of the rival contentions, it has to be seen whether the prayer of the Petitioners can be granted by this Court?

20. The dispute revolve around a short campus. Whether in view of the Central

amendment Act 24/2010, dated 18.8.2010, the Tamil Nadu

amendment Act 45/2008 (introducing Section 11B) stood eclipsed in the light of the Article 254(1) of the Constitution and Whether the State

Amendment was repugnant to the amendment made by the Central Act and that the Central law will prevail over the State law?

21. Reliance was placed upon a judgment of the Supreme Court in T. Barai Vs. Henry Ah Hoe and Another, by the learned Additional

Government Pleader. He referred to paragraph 15 of the said judgment, which reads as follows:

15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the

case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such

conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former

prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that

subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be

void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception viz. that if the President assents to a State law which has been

reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent

subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short,

the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject

would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The

predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2)

empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent.

Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the

"same matter". Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become

void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is

direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand

together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed.

In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1)....

(Emphasis added)

It is not clear as to how the said judgment will have any assistance to the Respondent State when there is no repugnancy shown and that the two

laws can possibly stand together. Further, the case referred to related to imposition of penal provisions and therefore, invocation of Article 21

arose in that case.

22. It must be noted that the Tamil Nadu Act 45 of 2008 was brought into effect from 7.11.2008 and it had received the assent of the President of

India on 18.09.2008. Insofar as the amendment is concerned, the State law will prevail in the State of Tamil Nadu in terms of Article 254(2) of the

Constitution. Since the question largely revolved around the question of repugnancy, it is necessary to refer to the Article 254 (1) and (2) and it

reads as follows:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.- (1)If any provision of a law made by the

Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an

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.

23. Before deciding the repugnancy, it has to be seen whether there are any distinction between the Central Law and State Law. Insofar as the

State legislation is concerned, the execution power is given to the Labour Court u/s 11B to execute its Awards or the settlements as defined u/s

2(p). The Award as well as the settlement has to be treated as decrees of Civil Courts. But, the Central amendment had given execution power

only in respect of the Awards or orders of the Labour Court or settlement arrived at by or before the Labour Court or Tribunal to be treated as

decrees and to be executed in terms of Order 21 of Code of Civil Procedure. As per the amendment in form of Sections 11(9) and 11(10), the

Labour Court or the Tribunal as the case may be were directed to transmit the award or order or settlement to the civil court having jurisdiction. It

is only that civil court that can execute the award, order or settlement as if decrees passed by it. A close reading of both the provisions will show

that the State amendment had a wider impact, i.e., it is not only the Awards of the Labour Court and settlements culminated before the Labour

Court, but even settlements arrived at between the employer and the workmen (either bipartite or tripartite) were also treated as decrees. The said

power was not available for all types of settlements in the Central amendment. While the State amendment specified that it was the labour court

should execute its Award and can have the power of a civil court to execute its awards or settlements, in the Central amendment, the Labour

Courts are merely directed to transmit them to the civil court having jurisdiction for the purpose of executing the Awards or settlements.

24. It must be noted that both amendments can be said to be operating on different fields. In relation to the industry, where the Central

Government is the appropriate Government it can create its own labour court and tribunal. Insofar as the State of Tamil Nadu is concerned, the

Central Government by virtue of the power u/s 7A had created only one Central Government Industrial Tribunal-cum-Labour Court (CGIT) for

the entire State. It did not have that much load of work which the State Labour Courts or Tribunal have and it may be possible either the Award or

settlement entered before can be transmitted to the civil court having jurisdiction. But the same thing cannot be said to happen in respect of the

State Labour Courts and Tribunal, because the work here is not only enormous, but the extended operation of Section 11B will create more

number of work as it not only covers adjudicated matters, but also the settlements arrived at between the parties. Therefore, it is possible to have

both amendments stand together without there being any repugnancy to each other.

25. In respect of the contention that the amendment of the State legislature was repugnant due to the subsequent Central amendment, it has to be

examined with the law relating to repugnancy and the scope of Article 254(2) in this regard. Under Article 246 of the Constitution, the subject

matter of law that can be made by the Parliament and the legislature of the State are delineated. Under Article 246(2), the Parliament as well as the

legislature of the State has power to make laws with reference to any matters enumerated in the List III of the Seventh Schedule of the Constitution

known as the concurrent list. Item 22 deals with employment and unemployment. It is an admitted fact that the law relating to the present legislation

comes under List III which is the concurrent list. When once the State legislature received the assent of the President, then in terms of Article

254(2), it will prevail over any Central legislation in that State. Even though it was argued that subsequent law made by the Parliament was to

prevail, the proviso to Article 254(2) only enables the Parliament to make law at any time with reference to the same matter including the law

adding, omitting, varying or repealing the law so made by the legislation. In the present case, nothing is seen from the Central Act 24/2010 that it

was intended to omit or vary or repeal the law made by the State legislature. On the other hand, the Parliament made law for the entire country and

did not even intend to eliminate the State enactment.

26. It will be worthwhile to refer to certain decisions of the Supreme Court which will have a bearing on the said subject.

27. The Supreme Court vide its judgment in H.H. The Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur Vs. The State of Rajasthan and

Others, dealt with the question of repugnancy in the Industrial Disputes Act i relation to the law made by the State legislature. In paragraph 14, it

was stated as follows:

14. It is unnecessary however to consider the merits of these contentions because the legislature has remedied the defects, if any, in the constitution

of the Tribunal, by ending the Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act, 1959, which was reserved for the

consideration of the President of India and has received his assent. By Section 2(1) of that Act, notwithstanding any judgment, decision or order of

any Court and notwithstanding any defect or want of form or jurisdiction, the Industrial Tribunal for Rajasthan, constituted u/s 7 of the Industrial

Disputes Act, 1947 by Government notification dated June 2, 1953, as amended by order dated March 9, 1956, shall, as respects the period

commencing on the 10th day of March 1957 and ending with the 15th day of April, 1949, be deemed to have been duly constituted u/s 7A of the

said Act. By Sub-section (2) it is provided that notwithstanding any judgment, decision or order of any court all references made to and all

proceedings taken and orders passed by the Industrial Tribunal constituted in Sub-section (1) between the period March 10, 1957 and April 15,

1959, shall be deemed respectively to have been made, taken and passed as if the said Tribunal were constituted u/s 7A of the Act. It is clear from

the validating provisions that the Tribunal Originally constituted u/s 7 of the Industrial Disputes Act, 1947, before it was amended by Act 36 of

1956 is to be deemed to have been duly constituted u/s 7A, and the reference made on December 18, 1957 is to be deemed to have been made

as if the Tribunal were constituted u/s 7A of the amended Act. The Validating Act is because of Item 22 - List III of the Seventh Schedule to the

Constitution within the competence of the State Legislature, and it was reserved for the consideration of the President and has received his assent.

It must by virtue of Article 254(2) prevail in the State of Rajasthan.

28. The Supreme Court in M. Karunanidhi Vs. Union of India and Another, has held that presumption is always in favour of the constitutionality of

a statute and before any repugnancy can arise, certain conditions must be

satisfied and there can never be any repeal by implication unless the inconsistency appears on the face of the two statutes. In paragraphs 24 and 35, the Supreme Court had observed as follows:

24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts.

Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and

a situation is reached where it is impossible to obey the one without disobeying the other.

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions,

so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without

coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of

repugnancy arises and both the statutes continue to operate in the same field.

29. The Supreme Court while permitting the law to be made by both Central and State Government has held that in order to find the

inconsistencies, it should be seen whether by abiding the State law without flouting or violating the Central law, then it cannot be a case of

repugnancy and the laws of complementary to each other. Both laws can stand together. Reference may be made to the judgment of the Supreme

Court in Ram Chandra Mawa Lal, Varanasi and Others Vs. State of Uttar Pradesh and Others, In paragraph 50, the Supreme Court had

observed as follows:

Is the alleged inconsistency irreconcilable or intolerable one?

50. There are degrees of inconsistency in the context of conflict of laws. There can be apparent or surface inconsistency which may be considered

as a non-hostile, tolerable, benign, one, subject to the unquestioned power of the Centre to override the State if so minded. On principle, every

apparent inconsistency cannot be presumed to be hostile or intolerable. More so when the Centre does not even raise a whisper of discord. One

of the tests for ascertaining whether the inconsistency is an irreconcilable or intolerable one, is to pose this question: Can the State law be obeyed

or respected without flouting or violating the Central law in letter and spirit? If the answer is in the affirmative, the State law cannot be invalidated.

Not at any rate when the State law merely "promotes" the real object of both the laws, and is in the real sense "supplementary" or

"complementary" to the Central law. In the present case the test answers in favour of the validity of the impugned State notification. The Central

notification is not violated if the dealers sell the fertilizers from out of the existing stocks acquired at the lower rates, for, both the notifications fix the

maximum selling price and the maximum selling price fixed under the State notification is not higher than that fixed under the Central notification.

What is more, the State notification "promotes and serves" the object and purpose of both the Centre and the State. "Promotes and serves", in the

sense, that the manifest object of fixing maximum ceiling price is to make available to the cultivators who grow the food for the Nation to obtain the

inputs at reasonable prices and to protect them from exploitation so that the food production is not retarded. It is not contended even by the

Petitioners, for the very good reason that it is incapable of being so contended, that the object of the price regulation is to enable the dealers to

make unconscionable profit. Thus the impugned State notification promotes rather than "defeats", the "life-aim" of Central as also the State

notifications. It "helps" rather than "hurts" the objectives and goals of the Centre, and there is no conflict whatsoever of "interest", "purpose", or

"perspective". The State has done only that which the Centre presumably would

have readily done if it was fully aware of the situation from all angles of vision. For, the only impact of the impugned notification is that the "cultivator" for whose protection the price regulation is essentially

made, is saved from exploitation without hurting the legitimate claim of the dealer, who, in any case, gets his fixed profit margin of Rs 45 per ton.

30. The Supreme Court had an occasion to consider the effect of provisions relating to retrenchment" under Chapter V-A of the ID Act, 1947 as

well as restrictions imposed on the employer on terminating the service of an employee u/s 41 of the Andhra Pradesh Shops and Establishments

Act. It was found that subsequent to the Central Act, the State enactment had received the assent of the President. Notwithstanding the fact that

the State enactment did not have the provisions relating to retrenchment, the Supreme Court found that while the right of parties can be derived

from the Central Act, there is no impediment for the workman to agitate such right granted under the Central Act in a forum provided under the

State enactment. The said view was laid in Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao

and Others, . In paragraph 7, the Supreme Court had observed as follows:

10. The result of the above discussion is that if the employees are "workmen" and the management is an "industry" as defined in the Central Act

and the action taken by the management amounts to "retrenchment" then the rights and liabilities of the parties are governed by the provisions of

Chapter V-A of the Central Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities u/s

41(1) and Section 41(3) of the State Act.

31. The Supreme Court vide its judgment in Pt. Rishikesh and Another Vs. Salma Begum (Smt), has held that merely because there is subsequent

Central Act on the same issue is enacted, it does not automatically result in a repugnancy. Unless they are in coalition course, there is no necessity

for the State legislature to re-enact the law to make it valid. In this context, it is necessary to refer to paragraph 21 of the said judgment, which

reads as follows:

21. The condition precedent to bring about repugnancy should be that there must be an amendment made to the principal Act under the Central

Act and the previous amendment made by a State Legislature or a provision

made by a High Court must occupy the same field and operate in a collision course. Since the State Act as incorporated by Act 37 of 1972 and the Explanations to Rule 5 by Act 57 of 1976, Rule 5 was not occupied by the Central Act in relation to the State of U.P., they remain to be a valid law. We may clarify at once that if the Central law and the State law or a provision made by the High Court occupy the same field and operate in collision course, the State Act or the provision made in the Order by a High Court being inconsistent with or in other words being incompatible with the Central Act, it becomes void unless it is re-enacted, reserved for consideration and receives the assent of the President after the Central Act was made by Parliament i.e. 10.9.1976.

32. In the present case, there is no conflict between the State amendment and the Central amendment made by the Parliament, though they occupy the same subject like the execution of awards of the labour court. But the State amendment also covers wider area of settlements coming within the meaning of Section 2(p) of the ID Act also. There is neither any apparent or real conflict between the two amendments. It must also be noted that both amendments related to procedure for executing Awards, orders or settlements. While the Parliament amendment enabled the jurisdictional civil court to execute such decrees in terms of Order 21 of Code of Civil Procedure, the State Government had given powers only to the Labour Court.

33. In the present case, while there is only one Central Government Industrial Tribunal-cum-Labour Court exists in the State of Tamil Nadu having a very few cases. The Awards turned by the 12 Labour Courts and 1 Industrial Tribunal in the State are enormous. Further figures relating to settlements are unavailable as they were done on the volition of parties. There is likelihood of increase in number of such settlements being executed by the executing court. If such matters are sent to the so-called jurisdictional civil courts, it will not only result in time consuming process of delay, because even those courts are saddled with numerous execution petitions, but it will also result in enable the employers to invoke the powers conferred u/s 47 of Code of Civil Procedure. u/s 47 of Code of Civil Procedure, though execution courts cannot go behind decrees, yet there are well known exceptions made. It has been held that objections

regarding invalidate decree can be raised even at the execution stage and in

Sabitri Dei and Others Vs. Sarat Chandra Rout and Others,

34. It is well settled by a catena of decisions that the question raised by the Judgment-debtor u/s 47 CPC that the decree sought to be executed is

a nullity is a question to be determined by the executing court under this Section. But, it must be borne in mind that the executing court cannot

adjudicate upon the legality or correctness of the decree unless the decree is a nullity. In other words, if the decree is challenged as the same is

nullity, the executing court can go into it, but if the execution of the decree is challenged on the ground that the decree is contrary to law, such

objection cannot be entertained under this Section. The Court executing the decree is competent to embark upon an enquiry of the facts tending to

show that the Court which passed the decree had no jurisdiction, unless the Court has by wrongly deciding a jurisdictional fact assumed

jurisdiction.

35. Similarly, the question whether a decree is capable of execution or not falls under this Section and the executing court is competent to decide

whether a decree is executable or incapable of execution. For example, where a decree is vague in its term, or a decree becomes incapable of

execution because of the subsequent events to the decree or because of the subsequent legislation, or where the decree merely declares the rights

of the parties, then in such cases the decree can be said to be incapable of execution.

36. The executing court can also go into the question if the decree is nullity or invalid. The Supreme Court has time and again held that the civil

court's jurisdiction over the matters covered by the Industrial Disputes Act are impliedly ousted. By the process of sending concluded awards,

orders or settlements indirectly power is conferred on civil courts to go behind such decrees in case an employer wants to raise such issues.

Invariably an employer who has adverse order against him will engage a counsel before the civil court, whereas u/s 36(1) of the ID Act, the

workman can be represented by his authorised representative including an office bearer of his trade union of which he is a member. These

difficulties were never kept by the Parliament while making the amendment to Section 10. The State amendment as well as the Central amendment

do not stand on a coalition course. Since the State amendment had received the assent of the President under Article 254(2), it can be a valid law

insofar as the State of Tamil Nadu is concerned. Such an interpretation is not only beneficial to the scheme of the Industrial Disputes Act, but also

will render help to the workmen who will have inexpensive procedure before the Labour Court. Therefore, the contention raised by the

Respondents is without merits and deserves to be dismissed.

37. In the present case, as already noted, while the amendment was made and brought into force, the State Government did not think about the

financial side of the matter. The State Government woke up only when the High Court informed them about the expenditure involved in creating the

execution machinery for each Labour Court. The State Government cannot refuse to provide the execution machinery only on account of the

economic burden because it is the State legislature which had brought about the amendment. The first Respondent being a delegate had also

brought into force the State amendment without creating the infrastructure.

38. The Supreme Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), had emphasised the Judicial impact

assessment to be made before legislation is introduced. It is necessary to refer to the following passages found in paragraphs 46 to 49, which reads

as follows:

46. The Committee has taken note of para 7.8.2 of Vol. I of the Report of the National Commission to Review the Working of the Constitution

which reads as follows:

7.8.2 The Government of India should not throw the entire burden of establishing the subordinate courts and maintaining the subordinate judiciary

on the State Governments. There is a concurrent obligation on the Union Government to meet the expenditure for subordinate courts. Therefore,

the Planning Commission and the Finance Commission must allocate sufficient funds from national resources to meet the demands of the State

Judiciary in each of the States.

47. The Committee has further noticed that:

33.3 As pointed out by the Constitution Review Commission, the laws which are being administered by the courts which are subordinate to the

High Court are laws which have been made by:

(a) Parliament on subjects which fall under the entries in List I and List III of Schedule 7 to the Constitution, or

(b) State Legislatures on subjects which fall under the entries in List II and List III of Schedule 7 to the Constitution.

But, the bulk of the cases (civil, criminal) in the subordinate courts concern the law of contract, the Transfer of Property Act, the Sale of Goods

Act, the Negotiable Instruments Act, the Penal Code, the Code of Civil Procedure, the Code of Criminal Procedure, etc., which are all Central

laws made under List III. In addition, the subordinate courts adjudicate cases (in civil, criminal) arising under Central laws made under List I.

33.4 The Central Government has, therefore, to bear a substantial portion of the expenditure on subordinate courts which are now being

established/maintained by the States. (The Central Government has only recently given monies for the Fast Track Courts but these courts are a

small fraction of the required number.)

33.5 Under Article 247, the Central Government could establish courts for the purpose of administering Central laws in List I. Except a few

tribunals, no such courts have been established commensurate with the number of cases arising out of subjects in List I.

48. The Committee has suggested that the Central Government has to provide substantial funds for establishing courts which are subordinate to the

High Court, and the Planning Commission and the Finance Commission must make adequate provisions therefore, noticing that it has been so

recommended by the Constitution Review Committee.

49. The Committee has also suggested that:

Further, there must be "judicial impact assessment", as done in the United States, whenever any legislation is introduced either in Parliament or in

the State Legislatures. The financial memorandum attached to each Bill must estimate not only the budgetary requirement of other staff but also the

budgetary requirement for meeting the expenses of the additional cases that may arise out of the new Bill when it is passed by the legislature. The

said budget must mention the number of civil and criminal cases likely to be generated by the new Act, how many courts are necessary, how many

judges and staff are necessary and what is the infrastructure necessary. So far in

the last fifty years such judicial impact assessment has never been made by any legislature or by Parliament in our country.

39. Having introduced the legislation and also brought it into force, it is not open to the State Government to resile from their obligation on account of the funding that was required. The earlier cumbersome procedure of moving the Government for a certificate u/s 33C(1) is not only time consuming, but the revenue recovery machinery provided therein is a colonial process and proved to be most ineffective. In fact, neither the State amendment nor the Central amendment had taken away the jurisdiction of the State Government to issue a certificate u/s 33C(1) for recovering the amounts as arrears of land revenue. As seen from the earlier data given in para 7, the State Government was unnecessarily saddled with the long cumbersome procedure for issuing certificates and placing the revenue authorities to collect the amounts from the employer. It is an unnecessary diversion and an extra load on the revenue staff. Therefore, it is in the interest of State Government itself, the Act was amended. Having created the power to the Labour Courts, they should also provide the supporting machinery, lest the workmen will be left high and dry.

40. In the light of the above, both the writ petitions will stand allowed. The first Respondent State is hereby directed to provide the infrastructure and machineries as requested by the High Court vide letter dated 05.07.2010 and accepted by the State Government vide Status Report, dated 6.8.2010 within a period of three months from the date of receipt of the order and report compliance. However, there will be no order as to costs.