

(1967) 03 AHC CK 0037
In the Allahabad High Court

Uttar Pradesh State Electricity Board and Another	APPELLANT
Vs	
City Magistrate and Others	RESPONDENT

Date of Decision : 16-03-1967

Acts Referred:

Constitution of India, 1950 — Article 254, 29
Electricity (Supply) Act, 1948 — Section 5, 79
Government of India Act, 1935 — Section 107, 183, 79
Payment of Wages Act, 1936 — Section 13, 17

Citation : (1968) 2 LLJ 21

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The State Electricity Board prays that the order of the Additional District Judge and the prescribed authority passed under the Payment of Wages Act, 1936, be quashed.

2. The State Electricity Board is a body corporate constituted by the Government of Uttar Pradesh u/s 5 of the Electricity (supply) Act, 1948. In October 1963 the board took over the electrical undertaking of the Jhansi Electricity Supply Company, Ltd. It has also reemployed the persons working in the company. The board fixed the salary and dearness allowances of these persons at rates mentioned in annexure A to the petition. Generally the salaries of the employees were enhanced in comparison to what they were being paid previously. In April 1965 the president of the Jhansi Electricity Supply Workers' Union instituted an application u/s 13 of the Payment of Wages Act, 1936, on behalf of various workmen. It was alleged that the workmen were entitled to payment of dearness allowances in accordance with the Government notification dated 6 December 1948 learned by the State Government u/s 3(b) of the Uttar Pradesh Industrial Disputes Act. It was claimed that the State Electricity Board was paying them a less amount by way of dearness allowances, and each of the employers was entitled to the difference as deducted wages. Various amounts

were claimed by each of the employees for the period 1 November 1963 to 31 March 1965. The application was contested by the board on inter alia, the ground that the salaries and other conditions of service of the employees were fixed by the board u/s 79 of the Electricity (Supply) Act, 1948, and the notification u/s 3(6) of the Uttar Pradesh Industrial Disputes Act, 1947, was not applicable to the State Electricity Board.

3. The prescribed authority repelled this plea and decreed the claim in part. It dismissed the balance of the claim on the ground that it was barred by limitation. The petitioner-board went up in appeal u/s 17 of the Payment of Wages Act. This appeal was partly allowed on 20 April 1966. The Additional District Judge held another part of the claim to be barred by time but the main plea of the petitioner-board was rejected and the finding of the prescribed authority that the notification u/s 3(b) of the Uttar Pradesh Industrial Disputes Act governed the petitioner-board, was upheld.

4. In the present petition the only question canvassed before me relates to the applicability of the notification u/s 3(b).

5. For the petitioner-board, the learned Additional Advocate General submitted that Section 79 of the Electricity (Supply) Act, 1948, conferred power on the State Electricity Board to fix the salaries, allowances and terms and conditions of the services of its employees. This was a special enactment in comparison, to the Industrial Disputes Act and will prevail over the latter. In any event, the two provisions were repugnant enactments of the Dominion legislature which prevail over the Uttar Pradesh Industrial Disputes Act which was an enactment of the provincial legislature and was passed earlier, in view of the provisions of Section 107 of the Government of India Act.

6. Section 107 of the Government of India Act corresponds to Article 254 of the Constitution. The two competing enactments were passed in 1947 and 1948, i.e., prior to the coming into force of the Constitution. Their operation will depend upon the Government of India Act which was then in force. Section 107(2) of the Government of India Act reads as follows:

Where a provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Dominion law or an existing law with respect to that matter, then if the provincial law, having been reserved for the consideration of the Governor General, has received the assent of the Governor-General, the provincial law shall in that province prevail, but nevertheless the Dominion legislature may at any time enact further legislation with respect to the same matter.

The principle embodied in Section 107(2) is that When there is legislation covering the same ground both by the Central and by the provincial legislature (?) both of them being competent to enact the same, the subsequent law of the Central would prevail over that of the provincial. In *Zaverbhai Amaldas Vs. The State of Bombay*, the Supreme Court held that though law enacted by the Central

legislature and within its competence would override provincial legislation covering the same field, the Dominion legislature had no Authority conferred upon it to enact a statute repealing directly any provincial statute. The Dominion legislature could only enact "further legislation with respect to the same matter." Advertising to the phrase, the Supreme Court held that if the later legislation deals not with the matters which formed the subject of the earlier legislation, but with other and distinct matters, though of a cognate and allied character, then it will not be further legislation with respect to the same matter. When there are two competing statutes, it has to be adjudged whether the later deals with the same matter which forms the subject of the earlier statute. If it does not, Sub-section (2) of Section 107 will not apply and under Sub-section (1) of that section, the provincial law (which had received the assent of the Governor-General) will continue to prevail in that State.

7. Section 107(2) rests on the principle of implied repeal. The principle of implied repeal is that if the provisions of a later enactment are so plainly repugnant to the provisions of an earlier enactment relating to the same subject that effect cannot be given to both at the same time, the Court will imply a repeal of the earlier enactment by the later [A.I.R. 1956 (2) *Michell v. Brown* (1859) 1 Ell. & Ell 267]. The construction of implied repeal will be made only where the inconsistency is so great that both the statutes cannot, to their full extent, be obeyed thus;

(a) Where there are general words in a later enactment, capable of reasonable and sensible application without extending them to subject specially dealt with by earlier legislation, the Court will not hold the earlier and special legislation indirectly repealed or altered merely by force of such general words without any indication of a particular intention to do so.

(b) Similarly, repeal will not be implied if it is possible to construe the scope of the two enactments to be different, e.g., where one applies to a class or persons while the other relates to individuals, where one states the general rules and the other is in the nature of an exception. [(274) S.O. 678 at 703. Basu's commentary on the Constitution of India, 4 May, Vol. IV. p. 189.]

Thus if one is a special and the other a general legislature, there will be no inconsistency or implied repeal and the special will prevail in its own field. In their true nature and character the two enactments would not be treated to be in respect of the same matter. Another principle laid down by the Supreme Court is that repugnancy must exist in fact and not depend merely on a possibility, that is to say, that the two enactments ought to specifically make provisions on the point, in conflict. In *Tike Ram v. State of Uttar Pradesh* the Supreme Court held:

Even assuming that sugarcane was an article relatable to the sugar industry within the meaning of Section 18G of Act 65 of 1851, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because as

has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order u/s 183 being issued by the Central Government could not be enough. The existence of such an order would be the essential pre-requisite before any repugnancy could ever arise.

So there should be an actual competing provision or regulation in existence. The later Central law must positively be shown to deal with the ground occupied by the provincial law, and negatively, should not be either a general or special law in relation to the provincial enactment. If any of these conditions are wanting, the last portion of Section 107(2) will not be attracted, and the Central statute will not prevail.

8. u/s 79 of the Uttar Pradesh, Electricity (Supply) Act, 1948, the State Electricity Board has been authorized to make regulations to provide for various matters enumerated in the clause thereof. Clause (c) mentions the duties of officers and servants of the board, and the salaries, allowances and other conditions of service. It is an admitted fact that the board has not yet made regulations u/s 79, and hence there is no corresponding (sic) provision to the notification of the State u/s 3(b) of the Uttar Pradesh Industrial Disputes Act. As held by the Supreme court, the existence of such a regulation is an essential prerequisite before any repugnancy could ever arise. The petitioner, therefore, cannot resist the application of the notification u/s 3(6) to its employees.

9. The learned Advocate-General urged that the provisions of Section 79 of the Electricity (Supply) Act, 1948, were special provisions and those of Section 3(6) of the Uttar Pradesh Industrial Disputes Act were the general provisions in respect of the terms and conditions of service of industrial workmen. Section 79 contemplates provisions for the terms and conditions of service of the employees of the Electricity Board alone, whereas Section 3(b) applied to all the workmen in the State, I am unable to endorse this submission. In order to see which one of the statutes is special, their nature and character have to be seen. The Uttar Pradesh Industrial Disputes Act, 1947, was passed, as its preamble states, to provide powers to prevent strikes, lookouts, to settle industrial disputes and other incidental matters. The relevant part of Section 3 states:

If in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may by general or special order make provision:

(a) * * * (b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order.

Dealing with this provision the Supreme Court in *State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd.*, held that:

It is true that the normal way of dealing with an industrial dispute under the Act

would be to have it dealt with Judicially either by conciliation or by adjudication and that judicial process cannot be circumvented by resort to executive action....But there may be an emergency and the Government may have to not promptly "for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or maintaining employment." It was therefore necessary to "arm it" with additional powers for dealing with such an emergency. Clause (b) of Section 3 was apparently enacted for this purpose. An order made thereunder would be in the nature of a temporary or interim order as would be clear from the words "for such period as may be specified" appearing therein....

According to the Supreme Court the true construction of Clause (b) of Section 3 was that it operated only in an emergency for securing the various conditions mentioned in the Section. An order under this provision is of general question of regulating the relationship of the employer and the employee. The object and the purpose of Section 79 are not to deal with emergency situations or to secure the matters mentioned in Section 3 of the Uttar Pradesh Industrial Disputes Act. The Electricity (Supply) Act deals with the topic of electricity which is mentioned in entry 31; list II (part II) to Schedule VII of the Government of India Act. Whereas, the Uttar Pradesh Industrial Disputes Act is covered by Article 29 (Industrial and Labour Disputes) of that Act(sic). The two statutes deal primarily with different subjects. The specific provisions in competition here also do not cover the same ground. Then Section 79 deals with the topic of terms and conditions of service of workmen, generally. It is a general provision in respect of this subject-matter. whereas Section 3(b) of the Uttar Pradesh Industrial Disputes Act touches this subject only in a particular situation, namely, that of an emergency and for temporary period. It is, in my opinion, a special provision. Section 79 of the Electricity (Supply) Act, 1948, being a later enactment, but not being with respect to the same matter as Section 3(b) of the Uttar Pradesh Industrial Disputes Act, does not attract the concluding portion of Section 107(2) of the Government of India Act, and hence does not prevail over the latter. It being a general provision, there is no inconsistency or resugnancy with Section 3(b) which is a special provision. As held above no regulations having been framed u/s 79 there is no actual conflict. For all these reasons, the notification u/s 3(b) will prevail, apply and govern the workmen of the petitioner State Electricity Board.

10. In the result, there is no force in the petition and it is accordingly dismissed with costs.