FULL BENCH

Before Bhandari, C.J., Dulat and Gosain, JJ.

THE AMBALA EX-SERVICEMEN TRANSPORT CO-OPERATIVE SOCIETY LTD., AND ANOTHER—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

1958

May, 23rd

Motor Vehicles (East Punjab (Amendment) Act (XXVIII of 1948)—Sections 44-A and clause (d) *of Section 62 enacted thereby—Whether so repugnant to or inconsistent with the provisions of the Motor Vehicles (Amendment) Act, 100 of 1956, as to be deemed to have been impliedly repealed—Section 62—Permits that can be granted under —Section 62* (d) *as enacted by Punjab Act XXVIII of 1948—Whether gives uncontrolled and unrestricted power and is void under Article 19(1)* (g) *of the Constitution—Constitution of India—Article 372—Punjab Act XXVIII of 1948—Whether "law in force"—Repeal under Article 372—Whether refers to express repeal only.*

Held, that the provisions of section 44-A and clause (d) of section 62 enacted by the Motor Vehicles (East Punjab Amendment) Act, 28 of 1948, are not so repugnant to or inconsistent with the provisions of the Motor Vehicles (Amendment) Act, 100 of 1956, that they must be deemed to have been impliedly repealed. The Central Act does not provide that there would be no other authorities excepting those mentioned in section 44. The Punjab Act, by section 44-A, provides for the appointment of one authority in addition to those provided for in the Central Act. The Local requirements may call for some of the functions of

the authorities under the Central Act being performed by an additional authority appointed for the State and the Punjab amendments are intended to provide for that contingency. There is also no repugnancy between clause (d) of section 62 of the Punjab Act and the various clauses of section 62 of the Central Act as amended by Act 100 of 1956 and there is nothing to show that the Parliament had covered the whole field of legislation on the matter of issuing temporary permits and the purposes for which they could be issued. Whenever any need was felt for the same, the Legislature could always add to the purposes already provided for the issue of permits of temporary nature.

Held, that section 62 of the Motor Vehicles Act empowers the Regional Transport Authority to grant permits and such permits must be taken to be those which have been defined in section 2 (20). The fact that the permit granted under section 62 will be effective for a limited period cannot possibly mean that it is not a permit. Section 62 of the Act does not provide for any new kind of permit which has not been provided for in the previous sections. It only provides that the procedure laid down in section 57 need not be followed while granting permits for a limited period not exceeding four months in any case. Any kind of permit may, therefore, be granted for a temporary period under this section.

Held, that the power of issuing temporary permits given by clause (d) of section 62 as added by the Punjab Act XXVIII of 1948 is controlled by the provisions of sections 55 and 56 of the Act and the Legislature has, in the aforesaid provisions, indicated the basis for the exercise of the same. Both these sections are applicable to public carrier's permits which may be granted on permanent basis or for a limited period under section 62. All that section 62 provides is that the procedure laid down in section 57 shall not apply to the permits granted for a temporary period and the applicability of sections 55 and 56 is not excluded by section 62. The matters which have to be taken into consideration while granting the public carrier's permits either permanently or temporarily and the limitations which have to be placed on them are provided for in the aforesaid two sections, and it cannot, therefore, be held that the power given to the Regional Transport Authority for issuing permits under section 62 is an uncontrolled or unrestricted one.

Held, that the law as enacted by the Punjab Act, 28 of 1948, must be deemed to be "law in force", i.e., the existing law, regarding which Article 372 of the Constitution specifically provides that it shall continue in force until altered or repealed or amended.

Held, that there is no reason to restrict the meaning of the word "repeal" in Article 372 of the Constitution merely to an express repeal and to exclude the implied one.

Case Law reviewed.

Case referred by Hon'ble Mr. Justice K. L. Gosain, on 14th April, 1958 for constitution of a larger bench for decision on questions of law involved in the case and later decided by a Full Bench consisting of Hon'ble the Chief Justice Mr. A. N. Bhandari, Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice K. L. Gosain on 23rd May, 1958.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari or any other suitable writ, direction or order be issued quashing the orders of the State Transport Commissioner and of the Secretary, Regional Transport Authority, Patiala granting Public Carrier's permits to respondents 4 to 8 and further praying that the Respondent No. 1 be directed to reconstitute an appellate authority under the Indian Motor Vehicles Act, 1939 as amended.

D. K. Mahajan, R. Sachar and G. P. Jain, for the Petitioner.

S. M. Sikri, Advocate General, for the State and K. S. Thapar, M. S. Sethi and M. S. Gujral, for other respondents.

Order

Gosain, J.

Gosain, J.—The facts giving rise to this petition are as under. On the 10th October, 1957, the State Transport Commissioner, Punjab, granted 5 public carrier permits, one each to Respondents Nos. 4 to 8, for a period of 4 months and directed

the Regional Transport Authority, Ambala, to issue the same. The Regional Transport Authority by their resolution No. 13 passed on the 17th October, 1957, took exception to the aforesaid order and characterising the same as illegal refused to comply with the same and resolved that the Chairman should address the State Government on the subject in the light of the legal position. Respondents Nos. 4 to 8, one after the other, then made applications to the State Transport Commissioner that each of them had changed residence to Patiala and that it was convenient for each of them to have a permit issued by the Regional Transport Authority, Patiala, to issue necessary permits and the said orders were duly complied with. The petitioners who claim to be the public carrier permit-holders and who are already plying their goods vehicles on the Kalka-Simla route for which the aforesaid 5 permits have also been issued have filed the present petition in this Court under Article 226 of the Constitution of India seeking to obtain appropriate writ quashing the proceedings of the State Transport Commissioner and the Regional Transport Authority, Patiala, in respect of the 5 permits in question. They allege that they already hold public carrier permits for the same route and are plying their goods vehicles there; that in pursuance of the directives No. 8807/T issued by the Secretary, Provincial Transport Authority, Punjab, to the Secretary, Regional Transport Authority, Ambala, and No. 12541/T issued by the Chairman, Provincial Transport Authority to the Secretary, Regional Transport Authority, Ambala, they were eligible for the grant of the public carrier permits on the route in question; that the petitioner No. 2 actually applied for the grant of the same but were informed by the Provincial Transport Authority, Punjab, by his office memo No. 9440/T/1, dated the 31st December, 1956, that it was decided to keep the vacant public carrier

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permits on the Kalka-Simla route in reserve for "emergent and unforeseen requirements in connection with Government work," and therefore the request of the petitioner No. 2 could not be acceded to; that the State Transport Commissioner had been appointed in pursuance of the provisions of section 44-A added by the Punjab Legislature to the Central Act by means of the Motor Vehicles (East Punjab Amendment) Act (Act 28 of 1948), and the notification investing powers of issuing public carrier permits had also been issued by the State of Punjab under the provisions of the said section; that clause (d) had been added by the Punjab Legislature to section 62 of the Central Act by means of the aforesaid Punjab Act and the permits in question purport to have been granted in pursuance of the powers alleged to vest in the issuing authority under the said clause; that section 44-A and clause (d) of section 62 being inconsistent with and repugnant to the provisions of the Central Act 100 of 1956 must be deemed to have been impliedly repealed by the said Central Act; that the State Transport Commissioner had no jurisdiction to grant the permits; that his action in the matter was *mala fide* for the reasons that he acted outside the Act and while asking the Regional Transport Authority, Patiala, to issue the permits he did not disclose that he had previously approached the Regional Transport Authority, Ambala, for this purpose and that they had refused to comply with his directions on the basis that he had no authority to act in the matter. It was further averred that the State Transport Commissioner had at any rate no authority to issue temporary permits of any kind and that clause (d) of section 62 was void also for the reason that it vested an unrestricted and uncontrolled power in the Transport authorities to issue temporary permits.

The petition was contested by the State of Punjab as also by the respondents in whose favour the impugned permits had been issued. They controverted the various pleas of the petitioners and denied that the grant of permit by the State Transport Commissioner was without jurisdiction or *mala fide*. They averred that the State Transport Commissioner was fully authorised to issue the permits in question and section 44-A and clause (d) of section 62 were in no way inconsistent with the provisions of Act 100 of 1956 and could not be deemed to have been repealed by the same.

Mr. D. K. Mahajan, learned counsel for the petitioners, contended—

(1) That the case was governed by Article 254 of the Constitution of India, and the provisions of section 44-A and clause (d) of section 62 being inconsistent with or repugnant to the provisions of the Central Act must be deemed to have been repealed by the said Act as envisaged by proviso to para (2) of Article 254 of the Constitution of India,

(2) that the action of the State Transport Commissioner in granting the permits in question was *mala fide*,

(3) that the State Transport Commissioner had at any rate no authority to act under section 62 of the Act and issue permits on temporary basis,

(4) that clause (d) of section 62 vested unrestricted and uncontrolled power in

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the Authority entitled to issue temporary permits and was, therefore, void and inoperative.

The learned Advocate-General in reply contended—

(i) That there has been no express repeal of the Punjab Act and there existed no such inconsistency or repugnancy between the provisions of the Punjab Act and those of the Central Act 100 of 1956 on the basis of which it may be held that the provisions of the Punjab Act had been impliedly repealed,

(ii) that there was no material to find any *mala fides* in the acts of the State Transport Commissioner and that in any case the petitioners in their lengthy petition had not attributed any *mala fides* to the acts of the State Transport Commissioner up to the stage of granting of the permits by him on the 10th October, 1957. Even if it were assumed that in implementing the order he had acted *mala fide*, the same would be of no consequence,

(iii) that the temporary permits contemplated by section 62 of the Act were for all intents and purposes permits as defined in the Act and the State Transport Commissioner having the authority to issue public carrier permits must be deemed to possess authority to issue permanent permits as also permits for a specified temporary period,

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(iv) that sections 55 and 56 of the Punjab Motor Vehicles Act laid the considerations and limitations which governed the discretion exercisable by the various authorities in the matter of granting of permits under section 62 of the Act and the power to grant the said permits could not, therefore, be termed as uncontrolled or unrestricted.

The points that fall for decision in this case are clear from the above-mentioned contentions and briefly stated are—

(1) whether the provisions of section 44-A and clause (d) of section 62 as enacted by the Motor Vehicles (East Punjab Amendment) Act (Act 28 of 1948) are so repugnant to or inconsistent with the provisions of Act 100 of 1956 that they must be deemed to have been repealed by the Central Act,

(2) whether the State Transport Commissioner had authority to issue permits under section 62 of the Act,

(3) whether clause (d) of section 62 gave uncontrolled and unrestricted powers to the various authorities under the Motor Vehicles Act and was, therefore, void and inoperative,

(4) whether the action of the State Transport Commissioner in granting the impugned permits was in any way *mala fide*.

Re point No. 1. The Motor Vehicles (East Punjab Amendment) Act (Act 28 of 1948) came

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into force on the 12th July, 1948, that is, before the enforcement of the Constitution of India on the 26th January, 1950. Para (1) of Article 372 of the Constitution of India reads as under :—

> "Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the *law in force* in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

Explanation I given under the said Article defines the expression "law in force" and reads as under :—

> "The expression 'law in force' in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

The reading of the above two provisions makes it clear that the law as enacted by the Punjab Act 28 of 1948 must be deemed to be "law in force", i.e., the existing law, regarding which the Constitution specifically provides that it shall continue in force until altered or repealed or amended.

In *Rama Chandra Misra* v. *President, District Board Ganjam*, (1), a Special Bench of the Orissa

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High Court had to determine whether the provision of section 166 of Madras Local Boards Act (1920) were repugnant to and had been impliedly repealed by the Motor Vehicles Act of 1939, and it was held that the Madras Local Boards Act of 1920, passed long before the commencement of the Government of India Act, 1935, must be treated as an existing law and not a 'Provincial Law, and hence the repugnancy between this Act and the Motor Vehicles Act of 1939 was between a provision of an existing "Indian Law" on the one hand and a provision of a "Federal Law" on the other and not between a provision of a "Provincial Law" and a provision of either a "Federal Law" or an existing "Indian Law". In the light of the above, the Special Bench found that section 107(1) of the Government of India Act, 1935, had absolutely no application and the repugnancy had to be resolved in accordance with the general principles relating to the construction of statute and not by any provision of the Government of India Act, 1935. It was also observed by the Special Bench that when the Central Legislature passed the Central Act in 1939 they were fully aware of the existence of section 166 of the Madras Act and if their intention was really to repeal the same they would have surely said so in section 134 which deals with repeal.

Mr. Sikri urges that the repeal envisaged by Article 372 of the Constitution of India is an express repeal and not an implied one. There is no reported ruling on the point one way or the other, but in my judgment there is no reason to restrict the meaning of the word 'repeal' merely to an express repeal and to exclude the implied one. Mr. Sikri then urges that the general presumption must be against alleged repeal on the ground that the intention to repeal, if any had existed, would have been declared in express terms. He further

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urges that according to the well-known canons of interpretation of statutes an inference of implied repeal can only be drawn if the provisions of the prior statute were wholly incompatible with the subsequent one or if the two statutes together would lead to wholly absurd consequences. In support of this argument he relies on—

(1) *Om Parkash Gupta* v. *State of U.P.* (1),

(2) *The State of Victoria and others* v. *The Commonwealth of Australia and others* (2),

(3) *Calicut Wynad Motor Service (Private) Ltd.* v. *State Transport Appellate Tribunal Trichur and another* (3),

(4) *P. M. Bramadathan Nambooripad* v. *Cochin Devaswom Board* (4),

(5) *Re A. S. Krishna and others* (5),

The rule of interpretation of statutes applicable to a matter like this is given at page 344 of Craies on Statute Law, Fifth Edition, in the following words :—

" 'I do not think', said Grove, J., in *Hill* v. *Hall* 'that a mere accidental inconsistency between two statutes amounts to a total repeal of the earlier; such a doctrine might be pushed to a mischievous extent.' 'What words,' said Dr. Lushington in *The India,* 'will establish a repeal by implication it is

(1) 1957 S.C.R. 423
(2) 58 C.L.R. 618
(3) A.I.R. 1958 Kerala 19
(4) A.I.R. 1956 Trav. Cochin 19
(5) A.I.R. 1954 Mad. 993

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impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that intention to repeal, if any had existed, would have been declared in express terms, so, on the other hand, it is not necessary that any "express reference be made to the statute which it is intended to repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject-matter were taken away by the subsequent statute. Perhaps the most difficult case for consideration is where the subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning, the particular provision in the prior statutes could not have been intended to subsist, and yet, if it were left subsisting, no palpable absurdity would have been occasioned.' It must therefore, always be a question for the Court to decide whether this second rule as to intention is applicable or not. and in coming to a decision on this point, repeal by implication is never to be favoured. 'We ought not to hold a sufficient Act repealed, not expressly as it might have been, but by implication, without some strong reason' ".

In *Om Parkash Gupta* v. *State of U.P.* (1), the point which fell for decision was whether the provisions of Prevention of Corruption Act, 1947,

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superseded section 409 of the Indian Penal Code. Their Lordships of the Supreme Court held that they did not and at page 434 observed as follows :—

> "It cannot also be held that section 409 of the Indian Penal Code is impliedly repealed by the Prevention of Corruption Act because it is impossible to say that the provisions of the two are wholly incompatible or that the two statutes together would lead to wholly absurd consequences."

The State of Victoria and others v. *The Commonwealth of Australia and others* (1), is a case under section 109 of the Constitution of Australia. The question that arose for decision in that case was whether section 329 of the Navigation Act impliedly overruled section 13 of the Marine Act. Section 13 of the Marine Act provided for the removal, at the instance of a State authority, of any ship sunk in a port within Victoria and not removed by the owner, and for the recovery ot the cost of removal from the owner. Section 329 of the Navigation Act 1912—1935 made similar provision with respect to the removal, at the instance of a Commonwealth authority, of any ship, sunk "on or near the coast of Australia". It was held in that case that there was no such inconsistency between the commonwealth and State provisions as would deprive the port officer of the power conferred by section 13 of the Marine Act to secure the removal of a ship sunk in Port Phillip, within Victoria, and to recover the cost from the owner of the ship. Latham, C.J., who wrote the main judgment observed as under at page 626 of the report :—

> "The argument that the State section is invalid is based solely upon the Commonwealth section. There is, however, no

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inconsistency in express terms between the two sections, each of which simply purports to confer power upon an authority to do an act. The alleged inconsistency will exist only if the Commonwealth section is interpreted as meaning not only that the Minister can, but also that no one else can, remove the wreck. I see no reason for adopting such an interpretation of the section. The Commonwealth section simply confers a power upon the Minister. It certainly does not say in express terms that no one else shall have a similar power. There is, in my opinion, nothing in the subject-matter which makes it necessary to imply a provision to that effect. There is no inconsistency in two persons or several persons having power to remove the same wreck. Both an owner and a mortgagee of a ship, as well as public authorities, may well have a right to remove the same wreck."

In *Calicut Wynad Motor Service (Private) Ltd.* v. *State Transport Appellate Tribunal, Trichur and another* (1), the point that fell for decision was whether subsection (2) of section 64 added to the Motor Vehicles Act, 1939, by Madras Act 39 of 1954, was not repugnant to section 64-A inserted newly by Central Act 100 of 1956 and was, therefore, not void under Article 254(1) of the Constitution. Section 64(2) of Madras Act provided as under :—

"The authority prescribed under subsection (1) for the purpose of hearing appeals

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> may, either of its own motion or on application made to it, call for the records of any Regional Transport Authority or the State Transport Authority, as the case may be, for the purpose of satisfying itself as to the legality, regularity or propriety of any order made by such Transport Authority against which no appeal is provided for under subsection (1) and after examining such records pass such orders in reference thereto as it thinks fit."

Section 64-A in Act 100 of 1956 reads as under :—

> "The State Transport Authority may either of its own motion or on application made to it call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit."

It was held that there was no ground for holding that the provisions in the two Acts were mutually repugnant and that the two revising authorities, one under the Madras Act and the other under the Central Act, could co-exist.

In *P. M. Bramadathan Nambooripad* v *Cochin Devaswom Board* (1), th latter Act added two more disqualifications to those already given in section 66 of the Travancore-Cochin Hindu Religious Institutions Act for the membership of the Cochin

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Devaswom Board, and it was held that there was no repugnancy between the two provisions because the repugnancy had to be founded on the impossibility of co-existence. In para 17 of the judgment it was observed as under :—

> "Repugnancy has to be founded on the impossibility of co-existence. The new grounds of disqualification will certainly affect persons convicted by a criminal court of offences involving moral turpitude and the Members of the Legislature, but that does not necessarily mean that the two new grounds of disqualification are anything more than an addition or supplement to the four that already existed when the Constitution came into force."

In *Re A. S. Krishna and others* (1), the point that arose for decision was whether section 4(2) of Madras Prohibition Act (10 of 1937) which laid down a presumption was not repugnant to the provisions of the Evidence Act, because it added a presumption to the presumptions contained in the Evidence Act. It was held that presumptions contained in the Evidence Act are not exhaustive and other statutes can lay down other presumptions and section 4(2) of Madras Prohibition Act was not, therefore, repugnant to any provision of the Evidence Act.

Mr. D. K. Mahajan, on the other hand, relied on the tests of repugnancy as given in *Stewart* v. *Brojendra Kishore* (2), *The State* v. *Zaverbhai Amaidas*, (3), *Zaverbhai Amaidas* v. *The State of Bombay* (4), *Ch. Tika Ramji and others, etc.* v. *The State of Uttar Pradesh and others*, (5), and *Ahmad Khan* v. *Emperor* (6).

(1) A.I.R. 1954 Mad. 993
(2) A.I.R. 1939 Cal. 628
(3) I.L.R. 1954 Bom. 117
(4) (1955) 1 S.C.R 799
(5) (1956) S.C.R. 393
(6) A.I.R. 1948 Lah. 120

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In *Stewart* v. *Brojendra Kishore* (1), the question that arose for decision was whether section 10-C inserted by the Assam Court of Wards Amendment Act (1937) (which was passed by the Assam Legislature after the 1st of April 1937) was repugnant to certain "existing Indian laws" falling in the Concurrent Legislative List in Schedule 7, Government of India Act, 1935, and not having been reserved for the consideration or received the assent of the Governor-General as required by section 107(2) of the Government of India Act was void to the extent of repugnancy by virtue of section 107 of the said Act. Facts of that case are entirely distinguishable from those of the present case, but Mr. Mahajan relies upon some of the observations made in that case, which he says are of general application in matters of this nature. The said observations are as under:—

> "It is too narrow a test to say that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says 'do' and the other 'don't'. There may well be cases of repugnancy where both laws say 'don't' but in different ways. The true test is that if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law."

In *The State* v. *Zaverbhai* (2), the facts were these. The Essential Supplies (Temporary Powers) Act, 1946 (hereinafter referred to as the India Act)

(1) A.I.R. 1939 Cal. 628
(2) I.L.R. 1954 Bom. 117

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provided that the contravention of an order made under the Act was punishable with three years' imprisonment. The Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle Control (Enhancement of Penalties) Act, 1947 (hereinafter referred to as the State Act) provided for contravention of such an order an enhanced penalty of seven years' imprisonment which could be imposed only by a First Class Magistrate who was specially empowered in that behalf. The India Act was amended in 1949 and again in 1950, but the maximum penalty of three years' imprisonment was retained. The accused was convicted by a Magistrate (who was not specially empowered under the State Act) for contravening an order issued under the Essential Supplies (Temporary Powers) Act, 1946. On appeal the Sessions Judge set aside the conviction on the ground that the Magistrate trying the case was not competent to do the same. A petition for revision was filed in the High Court of Bombay against the order of the Sessions Judge and came up before a Bench consisting of Bavdekar and Chainani, JJ., who differed in their conclusions, the former being of the opinion that the Bombay Act had not been repealed by the Central Act and the latter being of the opinion that the Bombay Act must be deemed to have been impliedly repealed by the Central Act. The matter was then placed before Chagla, C.J., who agreed with the view taken by Chainani, J. and observed as under :—

> "Therefore the proper test is what was suggested by Mr. Justice Sulaiman, viz., whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If effect cannot be given to both the laws and both the laws cannot stand together,

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then the law made by Parliament must prevail as against the law made by the State Legislature. Applying that test to the facts of this case, can the provision contained in Act LII of 1950 that the maximum sentence for a particular offence shall be three years, be given effect to along with the provision of the law contained in Bombay Act XXXVI of 1947 which provides that the maximum sentence for the same offence shall be seven years? In my opinion it is impossible to contend that effect can be given to both these provisions of the law. It is equally clear that both these provisions cannot stand together, one must give way to the other, and the law is clear that it is the law of the State that must give in to the law of Parliament."

The aforesaid decision of the Bombay High Court was appealed against to the Supreme Court of India and the judgment of their Lordships of the Supreme Court in the aforesaid appeal is reported as *Zaverbhai Amaidas* v. *The State of Bombay* (1). Their Lordships agreed with the view taken by Chagla, C.J., and Chainani, J., and held that the Bombay Act must be deemed to have been impliedly repealed by the Central Act. Their Lordships at page 809 of the report observed as under :—

"It is true, as already pointed out, that on a question under article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely,

(1) (1955) 1 S.C.R. 799

that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that section 2 of Bombay Act No. XXXVI of 1947 cannot prevail as against section 7 of the Essential Supplies (Temporary Powers) Act No. XXIV of 1946 as amended by Act No. LII of 1950."

In *Ch. Tika Ramji and others, etc.*, v. *The State of Uttar Pradesh and others* (1), the Constitutional validity of the Sugarcane (Regulation of Supply and Purchase) Act of 1953 and two notifications issued by the State Government on September 27, 1954, and November 9, 1955, the former under subsection 1(a) read with subsection 2(b) of section 16 of the Act and the latter under section 15 of the Act were challenged on the ground that they were repugnant to Central Acts LXV of 1951 and X of 1955. Their Lordships of the Supreme Court went into the provisions of each of the Acts and came to the conclusion that "these provisions were mutually exclusive and did not impinge upon each other, there being thus no trenching upon the field of one Legislature by the other," and on that basis found that the provisions of the U.P. Act had not been impliedly repealed and were not repugnant to the provisions of the Central Acts.

The case reported in *Ahmad Khan* v. *Emperor* (2), related to Frontier Crimes (Validation of

(1) (1956) S.C.R. 393
(2) A.I.R. 1948 Lah. 120

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Orders, Proceedings, Sentences and Acts) Punjab Ordinance 2 of 1946. The facts of that case are distinguishable from those of the present case, but the general principles of intepretation of statutes as given in *Stewart* v. *Brojendra Kishore* (1), were quoted in this case with approval.

The various tests to find out whether the provisions of section 44-A and clause (d) of section 62 enacted by the Punjab Act referred to above must be deemed to have been impliedly repealed by the enactment of the Central Act 100 of 1956 are clearly laid down in the three rulings of their Lordships of the Supreme Court referred to above as also in the passage quoted by me from Craies on Statute Law and may be briefly summarised as under :—

(1) Whether the provisions of the Punjab Act are wholly incompatible with the later Central Act.

(2) Whether the two statutes together would lead to wholly absurd consequences.

(3) Whether the Parliament by enacting Act 100 of 1956 covered the whole field on the matter or evinced intention to cover the same.

On the basis of the above tests it is now to be found whether the provisions of the Punjab Act referred to above must be deemed to have been impliedly overruled by the provisions of the Central Act 100 of 1956. Mr. D. K. Mahajan contended that section 44 of the Central Act 100 of 1956 provided for the constitution of two kinds of authorities, namely, (1) the State Transport Authority and (2) certain Regional Transport Authorities.

(1) A.I.R. 1939 Cal. 628

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According to this section each of them had to consist of at least three persons and the chairman of each of the same was to be a person having judicial experience. Section 44-A as enacted by the Punjab Legislature provided that a State Transport Commissioner may be appointed and may be given the powers of any or of all the authorities contemplated by the Central Act. The argument of Mr. Mahajan is that the Punjab Act is capable of negativing the whole scheme of the Central Act in the matter of constitution of authorities and that the two cannot, therefore, stand together or at any rate the two together will lead to absurd results. He also argues that the Parliament had provided for the authorities which may perform the various functions under the Act and had on that matter covered the whole field of legislation and there was no more scope for the State Legislature to enact. Mr. Sikri in reply contends that the Central Act nowhere says that the only authorities will be those which are mentioned in the said Act and that the Punjab Act which provided for an additional authority could not be said to be wholly incompatible with the Central Act, and that the two could stand together without leading to any absurd consequences. Mr. Sikri further urges that the Punjab Act has nowhere provided that the authorities contemplated by the Central Act should not be constituted and in fact the said authorities had been constituted in the Punjab. The Punjab Act had merely provided for an additional authority which may in the discretion of the Government be authorised to perform any of the functions of any of the other authorities. In my judgment there is no conflict between the Central and the Punjab Acts. The Central Act does not provide that there would be no other authorities excepting those mentioned in section 44. The Punjab Act provides for the appointment of one

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authority in addition to those provided for in the Central Act. The local requirements may call for some of the functions of the authorities under the Central Act being performed by an additional authority appointed for the State and the Punjab amendments are intended to provide for that contingency. Mr. Mahajan urges that the Central Act provides that all applications for the grant of permits shall be made to the Regional Transport Authority and that all the permits will be granted by the Regional Transport Authority and for this purpose relies on the provisions of sections 42, 43, etc., of Act 100 of 1956. His contention is that there is no section in the Central Act which provides that an application for the grant of a permit shall be made to the State Transport Commissioner. This contention in my opinion has no force for the simple reason that the Central Act having not provided for the appointment of a State Transport Commissioner could not possibly provide for applications being made to him. The Punjab Act contemplates the appointment of a State Transport Commissioner and provides that some of the functions of the State Transport Authority or of any of the Regional Transport Authorities may be assigned to the said State Transport Commissioner. If and when the functions are assigned he will for all intents and purposes be acting as State Transport Authority or Regional Transport Authority whose functions he is at the time performing and if and when it happens all applications which under the law are required to be made to any of those authorities will have to be made to him.

Re. clause (d) of section 62.—Section 62 of the Central Act before its amendment in 1956 empowered the Regional Transport Authority to grant permits to be effective for a limited period, not in

any case to exceed four months, but only in three contingencies provided for in clauses (a), (b) and (c) in the said section. The impugned Punjab Act added clause (d) to the said section which reads as under :—

> "(d) in any such circumstances as may, in the opinion of such authority, justify the grant of such permit."

Act 100 of 1956 added another clause (d) to the Central Act along with two provisos. Mr. Mahajan contends that the Parliament has covered the entire field of legislation so far as the temporary permits and the purposes for which they can be granted are concerned. His argument is that clause (d) enacted by the Punjab Legislature which provides for a blank cheque to the authority to issue a temporary permit in any circumstances whatever is really repugnant to Act 100 of 1956. Mr. Sikri contends that section 62 was intended to provide for contingencies in which temporary permits could be granted and that from the very nature of things it was not possible to circumscribe or to give an exhaustive list of the same. In 1948 a huge problem arose for the State as to how the displaced persons were to be transported from one place to another and it may be that clause (d) was added by the Punjab Legislature to meet that contingency. His argument is that it is not at all possible to cover the entire field of the purposes for which temporary permits may be issued and that the Parliament by recently adding clause (d) to the said section has shown that there was scope for another purpose being added. He urges that there is no repugnancy between clause (d) of section 62 of the Punjab Act and the various clauses of section 62 of the Central Act as amended by Act 100 of 1956. In my opinion the contention

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of Mr. Sikri must prevail on this point also. Act 100 of 1956 has not provided anything repugnant to the Punjab Act and there is nothing to show that the Parliament had covered the whole field of legislation on the matter of issuing temporary permits and the purposes for which they could be issued. Whenever any need was felt for the same the Legislature could always add to the purposes already provided for the issue of permits of temporary nature.

For the reasons given above I am of the opinion that the provisions of section 44-A and clause (d) of section 62 of the Punjab Act are not so repugnant to or inconsistent with the provisions of Act 100 of 1956 that they must be deemed to have been impliedly repealed.

Re. point No. 2.—The impugned permits in the present case were issued by the State Transport Commissioner for a period of four months. In the case of two of the respondents he has issued fresh temporary permits for another period of four months. Mr. D. K. Mahajan contends that under section 44-A the State Transport Commissioner can exercise only those powers which the State Government may confer upon him by means of a notification issued under the said section. Notification No. 6022(S) 6326 (Ch) T/57/5891, dated the 1st of July, 1957, empowers the State Transport Commissioner to exercise powers and to discharge the functions of the Regional Transport Authority ;—

(i) in the regions throughout that area within which it is intended to rehabilitate the operators displaced from routes which are taken over for operation by Government Transport Service ;

(ii) for the purpose of granting public carrier permits in the State ; and

(iii) in relation to permits for plying taxicars and motor cycle rickshaws in Chandigarh including their trips to other stations in the State.

Applications for public carrier permits have to be made under section 54 and the procedure for considering the applications is given in sections 55, 56 and 57 of the Act. The argument of Mr. Mahajan is that the power granted to the State Transport Commissioner for issuing the public carrier permit must be held limited to the public carrier permit as contemplated by section 54 and that it cannot possibly extend to the temporary permits granted under section 62. He urges that the Act definitely mentions various kinds of permits, e.g., stage carriage permits, contract carriage permits, public carrier permits, private carrier permits and temporary permits and that the notification vesting powers in the State Transport Commissioner does not at all mention anything about the temporary permits. The power granted to the State Transport Commissioner must therefore be taken to be only in respect of the permits covered by section 54. There is an obvious fallacy in the argument. Section 62 of the Act does not provide for any new kind of permit which has not been provided for in the previous sections. It only provides that Regional Transport Authority may, without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily * * *. Any kind of permit may under this section be granted for a temporary period. The power to grant a particular kind of permit must obviously include the power to grant the said

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kind of permit permanently or for a temporary period. The notification vesting powers in the State Transport Commissioner expressly provides that he may issue public carrier permits which must be construed to mean that he may issue the said permits permanently or for a temporary period. The word "permit" has been defined in section 2(20) of the Act as under :—

> " 'permit' means the document issued by the Commissioner or a Provincial or Regional Transport Authority authorising the use of a Transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle."

Section 62 empowers the Regional Transport Authority to grant permits and such permits must be taken to be those which have been defined in section 2(20). The fact that the permit granted under section 62 will be effective for a limited period cannot possibly mean that it is not a permit.

Re. point No. 3.—Clause (d) of section 62 as added by the Punjab Legislature reads as under :—

> "(d) in any such circumstances as may, in the opinion of such authority, justify the grant of such permit."

Mr. D. K. Mahajan contends that the power given by this clause is uncontrolled and unrestricted and must be held to be void. In support of his argument he relies on *Messrs Dwarka Prasad Laxmi Narain* v. *The State of Uttar Pradesh and two others* (1), where it was held that clause 4(3) of

(1) 1954 S.C.R. 803

the Uttar Pradesh Coal Control Order, 1953, which gave absolute power to the licensing authority to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under the Order was void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution of India and not coming within the protection afforded by clause (6) of the said Article. This contention cannot, in my opinion, prevail for the simple reason that the power of issuing temporary permits is controlled by the provisions of sections 55 and 56 of the Act and the legislature has in the aforesaid provisions indicated the basis for the exercise of the same. Section 55 of the Act provides that the Regional Transport Authority shall, in deciding whether to grant or refuse a public carrier's permit, have regard to the following matters, namely :—

"(a) the interests of the public generally,

(b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service ; ;

(c) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed :

(d) the benefit to any particular locality or localities likely to be afforded by the service ;

(e) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair ; and

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(f) the condition of the roads included in the proposed routes or area ;

(g) the nature of the goods to be carried with special reference to any of a fragile or perishable nature ; and

(h) the volume of traffic and the existence of marketing centres in the proposed area along or near the proposed route ;

and shall also take into consideration any representations made by persons already providing goods transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies. Section 56 provides for limitations which may be placed on the public carrier's permits. Both these sections are applicable to public carrier's permits which may be granted on permanent basis or for a limited period under section 62. All that section 62 provides is that the procedure laid down in section 57 shall not apply to the permits granted for a temporary period and the applicability of sections 55 and 56 is not excluded by this section 62. The matters which have to be taken into consideration while granting the public carrier's permits either permanently or temporarily and the limitations which have to be placed on them are provided for in the aforesaid two sections, and it cannot therefore be held that the power given to the Regional Transport Authority for issuing permits under section 62 is an uncontrolled or unrestricted one. The ruling of their Lordships of the Supreme Court in *Messrs Dwarka Prasad Laxmi Narain* v. *The State of Uttar Pradesh and two others* (1), cannot, therefore, be made applicable to the facts of the present case.

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Re. point No. 4.—Mr. Mahajan vehemently contended that the action of the State Transport Commissioner in granting the impugned permits was *mala fide* and that it must be quashed on that short ground. In his lengthy petition made to this Court under Article 226 he has not mentioned any *mala fides* in the act of the State Transport Commissioner up to the stage of his granting permits on 10th October, 1957. The only specific allegations of his *mala fide* acts relate to the period after the said date. It is stated in the petition that the State Transport Commissioner, after passing orders on 10th October, 1957, endorsed his orders to the Regional Transport Authority, Ambala and directed the said Authority to issue the permits in question. The Regional Transport Authority, Ambala, took exception to the order of the State Transport Commissioner and characterising the same as being contrary to law refused to comply with it. The State Transport Commissioner thereafter got the permits issued from the Regional Transport Authority, Patiala, by obtaining applications from respondents 4 to 8 that each of them had changed his residence one after the other from the Ambala Region to the Patiala Region. Mr. Mahajan's argument is that the procedure adopted cannot be called fair and straight forward. It may be so, but the action of the State Transport Commissioner with which this Court is now concerned is the one granting the permits on 10th October, 1957, and it is not of any or at least much consequence as to how and in what manner the order was implemented. If the order granting permits is free from *mala fides*, the fact that the procedure adopted in implementing the said order was rather curious or even unfair would not be of much relevancy for the purposes of deciding this case. It is, therefore, impossible to find that the action of the State Transport Commissioner

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in granting the impugned permits was *mala fide* or that the said order is liable to be quashed on that ground.

Mr. Mahajan lastly contends that the powers vested in the Punjab State by the provisions of section 44-A and in the Regional Transport Authority by the provisions of clause (d) of section 62 both enacted by Punjab Act 28 of 1948, are rather too wide and are capable of being put to gross misuse. The State Government under the garb of powers vested in it by section 44-A can appoint any person as a State Transport Commissioner and can by a notification provide that all the functions which have to be ordinarily performed by State Transport Authority or various Regional Transport Authority may be performed by the said Transport Commissioner. The Regional Transport Authority or the State Transport Commissioner under the garb of powers vested in them by clause (d) of section 62 can issue temporary permits in their sweet direction and in any circumstances they like. It is true that these two provisions of law are capable of being misused and that it would have been perhaps good if these two provisions had been expressly or impliedly repealed by the Parliament. The function of the Court is, however, to interpret the law and not to make it (*jus dicere et non jus dare*).

For the reasons given above the petition fails and is dismissed. In the peculiar circumstances of the cases, the parties are left to bear their own costs.

Bhandari, C. J.

BHANDARI, C J.—I agree.

Dulat, J.

DULAT, J.—I agree.

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