

Ratan Lal Adukia

Vs

Union of India

Civil Appeal Nos. 224 and 734 of 1988

(Rangath Misra, M. N. Vankatachaliah JJ)

19.07.1989

JUDGMENT

VENKATACHALIAH, J. –

1. These appeals, by certificate, preferred against the common order dated June 17, 1987 of the High Court of Calcutta in Full Bench Reference No. 1 of 1983 raise a short and interesting question, of some general importance, whether the choice of the forum for the cognizance of suits envisaged in Section 80 of the Indian Railways (Amendment) Act, 1961 [as substituted by Section 14 of the Indian Railways (Amendment) Act, 1961 (Act 39 of 1961)] is limited by Section 80 itself or whether provisions of Section 20 of the Code of Civil Procedure, 1908 and Section 18 of the Presidency Small Cause Courts Act, 1882, as the cases may be, in regard to places of suing, are also applicable to the suit referred to in the said Section 80.

2. The question, in other words, is whether the said Section 80 is a complete, self-contained, exhaustive code in regard to the place of suing respecting suits constituting a special law for such suits excluding, by necessary implication, the operation of provisions of Section 20 of the Code of Civil Procedure, 1908 and Section 18 of the Presidency Small Cause Courts Act, 1882. The Full Bench, resolving the earlier conflicts of judicial opinion in the High Court on the point, has held Section 80 as containing within it a self-contained scheme for suits envisaged by it and that Section 20 of the Code of Civil Procedure and Section 18 of the Presidency Small Cause Courts Act, 1882 stand excluded from operation. The Full Bench, however, has left open the question whether Section 80 also overrides Clause 12 of the Letters Patent.

3. In the original proceedings from which C.A. No. 224 of 1988 arises, appellant instituted Money Suit No. 35 of 1978 against the respondent in the court of the 6th Sub-Judge at Alipore, District 24-Parganas, West Bengal, seeking recovery of Rs. 13,200 respecting an alleged short delivery of a consignment booked with the respondent on April 24, 1975 Ex-Ernakulam to Ranchi, a station under the South Eastern Railway Administration. Respondent contested the suit on grounds, inter alia, that having regard to the said Section 80, the court at Alipore had no jurisdiction. The trial court by its order dated May 22, 1981 having rejected this objection as to jurisdiction, respondent preferred C. R. No. 2938 of 1981 under Section 115 of the Code of Civil Procedure, before the High Court to have that order revised. The matter was referred to a Full Bench, culminating in the order now under appeal.

4. In C.A. No. 734 of 1988, appellant instituted a Suit No. 3831 of 1985 in the Court of Small Causes, Calcutta, for the recovery of a sum of Rs. 6573.50 on account of short deliveries of two consignments booked with the respondent on April 27, 1984 and July 24, 1984 respectively, Ex-

Saugar in Central Railway to Ramkrishtopur in Eastern Railway. Similar objection as to jurisdiction having been urged, the trial court rejected that objection and decreed the suit. This was assailed before the High Court by the respondent. The Full Bench, by its common order, has held that the trial court had no jurisdiction and directed the return of the plaint for presentation to the proper court.

5. In order that the contentions of Dr. Shankar Ghosh urged in support of these appeals are apprehended in their proper perspective, it becomes necessary to refer to and notice the legislative history of the provision. Section 14 of the Indian Railways (Amendment) Act, 1961, substituted the old Section 80 by a new provision. The old section reads :

80. Suit for compensation for injury to through booked traffic. - Notwithstanding anything in any agreement purporting to limit the liability of Railway Administration with respect to traffic while on the railway of the another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more Railway Administrations, may be brought either against the Railway Administration from which the passengers obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the Railway Administration on whose railway the loss, injury, destruction or deterioration occurred.

The new Section 80 substituted in 1961 by the amending Act provides :

80. Suits for compensation. - A suit for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted :

(a) if the passenger was, or the animals or goods were, booked from one station to another on the railway of the same Railway Administration against that Railway Administration;

(b) if the passenger was, or the animals or goods were, booked through over the railway of two or more Railway Administrations against the Railway Administration from which the passenger obtained his pass or purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the Railway Administration on whose railway the destination station lies, or loss, injury, destruction, damage or deterioration occurred; and, in either case the suit may be instituted in a court having jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred.

The changes brought about in the scheme of the provisions are quite marked. The old section did not deal with liability for claims in respect of goods carried by a single railway. It concerned itself with goods etc., carried by more than one railways or what, in the concerned jargon, is called "through booked traffic" and provided that a suit inter alia for loss, destruction, damage, deterioration or non-delivery could be brought against the Railway Administration with which the

booking had taken place or against the Railway Administration of the delivery station. The old section spoke nothing of the places where such suits could be laid. The choice of the forum was regulated by Section 20 of the Code of Civil Procedure or the relevant provisions of the Presidency Small Cause Courts Act, as the case may be. This Court in *Union of India v. Ladu Lal Jain* ((1964) 3 SCR 624 : AIR 1963 SC 1681) observed that the principal place of Railway Administration can be said to be the place where the railways can be said to carry on business for purposes of clause (a) of Section 20 of the Code of Civil Procedure. It was held :

The principle behind the provisions of clauses (a) and (b) of Section 20 is that the suit be instituted at a place where the defendant be able to defend the suit without undue trouble.

... Union of India carries on the business of running railway and, can be sued in the court of the Subordinate Judge of Gauhati within whose territorial jurisdiction the headquarters of one of the railways run by the Union is situated.

This was said in a case governed by the old section. Does the position continue to hold good even after the new Section 80 was substituted in place of the old ?

6. The new Section 80 (substituted by Act 39 of 1961), however, brought about far-reaching changes in its scheme, the notable amongst them being three. The new section made specific reference to a certain class of suits having regard to their subject matter, to be dealt with under that section. Secondly, the new section also dealt with identity of the Railway Administrations which were made liable to the claim and, thirdly, the section specifically provided the places where such suit "may be instituted". Referring generally to the scope of the changes brought about by the 1961 amendment to Chapter VII of the Railways Act, 1890, this Court, in *Union of India v. The Steel Stock Holders Syndicate, Poona* ((1976) 3 SCC 108 : AIR 1976 SC 879) observed : (SCC pp. 115-116, para 10)

This history and the object with which the radical provisions of the new Act were introduced bear testimony to change of the nature of the liability of the Railway Administration We, therefore, agree with the learned counsel for the respondent that under the new Act the liability of the railway has been increased so as to take upon itself the responsibility of a common carrier.

7. The new comprehensiveness of the scheme of the amendments was one of the circumstances that commended itself to the High Court to persuade it to hold that the new Section 80 in Chapter VII, constituted a complete and self-contained special law as to the place of suing respecting suits envisaged by that section derogating from the generality of the provisions of Section 20 of the Code of Civil Procedure or the provisions touching the jurisdiction of the Small Cause Courts and that with the enactment of the new Section 80 there was an implied repeal of those other provisions respecting such suits.

8. The High Court took due notice of the fact that the new section did not expressly provide that in respect of suits envisaged by it, the provisions of Section 20 of the Code of Civil Procedure or Section 18 of the Presidency Small Cause Courts Act, 1882, as the case may be, shall no longer be applicable. The High Court took due note of the situation emerging from his omission. It noticed :

The new Section 80, no doubt, did not expressly provide that the said provision of Section 80 of the Act would override all other laws. But Section 80 of the Indian Railways Act is in the nature of the

special provision applicable only to suits for compensation against the railways.

The point is whether by enacting "... the suit may be instituted" in the courts having jurisdiction over the places mentioned in the last part of Section 80 of the Indian Railways Act, 1890, the said section of the Railways Act by implication overrides Section 20 of the Civil Procedure Code, 1908 and Section 18 of the Presidency Small Cause Courts Act, 1882.

9. The High Court took into consideration what, according to it, was the real intention in enacting the new Section 80 and was persuaded to the view that the section brought about an implied repeal of the other provisions as to the jurisdiction of the courts by itself providing a jurisdiction to these suits. It was observed :

By mentioning the courts in which the suits for compensation may be filed, Section 80 of the Railways Act purports to deal with matters which have been dealt with in Section 20 of the Code and Section 18 of the Presidency Small Cause Courts Act, These two sets of laws deal with the same subject of territorial jurisdiction of courts. We are, therefore, required to ascertain whether in respect of suits for compensation against the railways, the intention was to override the general law.

We have already indicated that Section 80 of the Railways Act was a particular or special legislation. Section 80 of the Railways Act purports to deal with the subject of places for instituting particular class of suits which was previously covered by Section 20 of the Code which was a general enactment. Two statutes cover the same field, i.e., territorial jurisdiction. Mentioning for the first time in Section 80 of the Railways Act of the places where suits for compensation may be instituted was itself 'introductory of a new law implying a negative'. When the same subject of territorial jurisdiction has been dealt with in the subsequent legislation (i.e., Section 80 of the Railways Act) the prior laws (Section 20 of the Code and Section 18 of the Presidency Small Cause Courts Act) on the same subject were not intended to subsist.

In other words, Section 80 of the Indian Railways Act by requiring something special to be done repealed by necessary implication the former general statute relating to territorial jurisdiction of courts insofar as the suits for compensation against the railways were concerned.

Any other construction, according to the High Court, would lead to anomalies and render Section 80 a surplusage. High Court said :

If it was to be held that clause (c) of Section 20 of the Code still applied to suits for compensation against the railways, then the cause of action for the purposes of jurisdiction of courts would arise not only at the three places mentioned in Section 80 of the Act but at several other places. In other words, the provisions of Section 80 of the Act relating to places where the suits for compensation may be instituted, would be, in that event, surplusage and unnecessary.

10. In the view of the High Court, the distinction between provisions in the new Section 80 on the one hand and Section 20 of the Code of Civil Procedure or Section 18 of the Small Cause Courts Act on the other, assumed particular significance as qualifying the court's jurisdiction in respect of a particular subject matter as distinct from those that relate to a court's territorial jurisdiction or pecuniary jurisdiction. The High Court observed :

Section 80 of the Railways Act, in effect, limits the application of Section 20 of the

Code by specifying the courts which shall have jurisdiction over the suits whose subject matter is the claim for compensation against the railways for loss of life or personal injury to a passenger or loss, destruction, damage, deterioration or non-delivery of animals or goods. We have already held that Section 80 of the Act, in other words is in the nature of a special provision in respect of classes of suits mentioned in Section 80 of the Indian Railways Act.

11. Dr. Shankar Ghosh assailing the soundness of the High Court's view, urged that the proposition on which its conclusions rest, if accepted, would render what was intended as a mere enabling entitlement to lose its character as such and become, on the contrary, a limiting factor and convert a right into a liability. Dr. Ghosh said that the legislative intent was clear; it did not render Section 80 overriding by not expressly excluding Section 20 of the Code of Civil Procedure. It expressly supplied, says Dr. Ghosh, an enabling provision when it chose the expression "... may be instituted". It is further contended that the doctrine of implied repeal was clearly inapplicable to the situation.

12. Dr. Ghosh commended for acceptance the reasoning of the Assam and Madras High Courts, in *Assam Cold Storage v. Union of India* (AIR 1971 Ass 69 : Assam LR (1970) Ass 202) and *Hindustan Machine Tools Ltd. v. Union of India* (AIR 1985 Mad 130 : 1985 ACJ 324), respectively, in preference to the views of the Calcutta, Bombay, Delhi and Karnataka High Courts in *Oghamal Chaudhury v. Union of India* (1974 Cal LJ 420), *Union of India v. Indian Hume Pipe Co. Ltd.* (AIR 1981 Bom 414 : 1981 Mah LJ 752), *New India Assurance Co. v. Union of India* (AIR 1981 Del 135 : (1981) 20 DLT 68), *Union of India v. C. R. Prabhanna & Sons* (AIR 1977 Kar 132 : (1977) 1 Kant LJ 247) respectively.

13. The thrust of the arguments of Dr. Ghosh is that the construction placed by the High Court ignores the crucial aspect that while the old Section 80 did not render the destination railway as such, liable to be sued if loss was not proved to have occurred there, the new section, however, renders the destination railway also liable even though no loss occurred there. The provision in the new Section 80 enabling the suit to be instituted at the place of the destination railway, where no part of the cause of action might otherwise be shown to have arisen, was, it is urged, a mere consequential provision - to give effect to the substantive provision, that the destination railway was also liable. Dr. Ghosh emphasised the expression "may be instituted" in Section 80 to reinforce his contention that Section 80 did really expand the rights of an not seek to restrict therein suitors. Learned counsel also emphasised that Section 80 did not contain any words expressly excluding clauses (a) and (b) of Section 20, Code of Civil Procedure, insofar as suits contemplated by Section 80 were concerned. The new Section 80, it is contended, did not intend to impair the choice of the forum afforded by Section 20 of the Code of Civil Procedure and that any contrary view, offends settled principles of statutory construction guiding the matter. Learned counsel invited attention to the following observations in *Ajoy Kumar Banerjee v. Union of India* ((1984) 3 SCC 127 : 1984 SCC (L&S) 355 : (1984) 3 SCR 252, 282) : (SCC p. 153, para 38)

The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied :

- (i) The two are inconsistent with each other;
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

and submitted that even if, conversely, the provisions of Section 80 are held to be a later special law, the principle of implied repeal could not be invoked as there was no inconsistency between the two provisions and that, on the contrary, both sets of provisions could co-exist and prevail. Learned counsel invited our attention to and relied upon the following passage in *Shah Babulal Khimji v. Jayaben D. Kania* ((1981) 4 SCC 8 : (1982) 1 SCR 187) : (SCC p. 23, para 28)

We find ourselves in complete agreement with the arguments of Mr. Sorabjee that in the instant case Section 104 read with Order XLIII, Rule 1 does not in any way abridge, interfere with or curb the powers conferred on the trial Judge by Clause 15 of the Letters Patent. What Section 104 read with Order XLIII, Rule 1 does is merely to give an additional remedy by way of an appeal from the orders of the trial Judge to a larger bench.

The learned counsel also placed reliance on the following observations of this Court in *Municipal Council, Palai v. T. J. Joseph* ((1964) 2 SCR 87, 98 : AIR 1963 SC 1561) :

In order to ascertain whether there is repugnancy or not this Court has laid down the following principles in *Deep Chand v. State of Uttar Pradesh* (1959 Supp 2 SCR 8, 43 : AIR 1959 SC 648) :

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether the legislature intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law;
- (3) Whether the two laws occupy the same field.

14. Reliance was also placed on Section 21-A inserted by Section 4 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1980 which provides :

21-A. Act to override other laws including Letters Patent. - The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law, including in particular the Letters Patent of the High Court.

to contend that the construction opted for by the High Court would run in the teeth of this express provision.

15. Lastly, learned counsel invited our attention to the following passages in *Crawford on Statutory Construction* :

All laws are presumed to be passed with deliberation, and with full knowledge of all existing cases on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. *Bowen v. Lease* (5 Will 225). It is a rule, says Sedgwick that a general statute without negative words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. (p. 633)

And, as we have already suggested, it is essential that the new statute cover the entire subject matter

of the old; otherwise there is no indication of the intent of the legislature to abrogate the old law. Consequently, the latter enactment will be constructed as continuation of the old one. (p. 624)

It was urged that repeal by implication is not to be presumed and that, on the contrary, there is always presumption against a repeal by implication. In order that there be a repeal by implication, there should be a clear, irreconcilable conflict between the two sets of provisions and the later enactment should be an exhaustive code in itself in respect of the subject matter. On these submissions, Dr. Ghosh says that the view taken by the High Court is clearly unsustainable in law.

16. The contention emphasised is that where a statute merely recognises a right pre-existing in common law and provides a remedy, such a remedy, unless the statute expressly bans or excludes other remedies, could only by an additional or concurrent one open to an election.

17. It is true that where a statute does not itself bring into being a new right not a pre-existing right and also provides a remedy therefor so however that the right and the remedy cannot be said to have been brought into existence for the first time *uno-flatu*, such a remedy would not generally be held to be exclusive but only an additional and con-current one, along with the pre-existing remedies, unless there are express indications to the contrary in the statute itself.

18. In *Municipal Council, Palai v. T. J. Joseph* ((1964) 2 SCR 87, 98 : AIR 1963 SC 1561), this Court considered the tests of repugnancy applied under Article 254(2) of the Constitution, relevant in the examination of circumstances bringing about an implied repeal. Strictly speaking the examination of the question whether an Act of Parliament prevails against the law enacted by a State under Article 254, does not really involve any question of repeal. In *Zaverbhai Amaldas v. State of Bombay* (AIR 1954 SC 752, 758 : (1955) 1 SCR 799 1954 Cri LJ 1822) this Court applied the test conversely, of the principle of implied repeal to cases of repugnancy under Article 254(2). It was observed :

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, that if the subject matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, than the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) where the further legislation by Parliament is in respect of the same matter as that of the State law.

The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject matters.

19. The High Court has come to the conclusion that new Section 80 made a conscious departure on the law as to the place of suing in respect of suits of a particular subject matter envisaged by that

section. The High Court has held that the new Section 80 is a self-contained provision in regard to the choice of fora for such suits. According to the High Court, there was no need for the legislature to specify the places of suing which would otherwise be covered by Section 20 CPC unless the special prescription as to places of suing was considered to be necessary - in derogation to the general law as the matter contained in Section 20 CPC or the provisions in the Small Cause Courts Act.

20. As to the words "may be instituted" occurring in that section, the High Court observed :

The use of the expression 'may be instituted' in Section 80 of the Railways Act was equivalent to 'shall be instituted.' Section 80 conferred right to institute suits for compensation against the railways for breach of their obligations for carrying passengers, animals or goods specified in Chapter VII of the Indian Railways Act. Both the obligation on the part of the railways and the right of the consignor and the consignee to institute suits are now statutory in their nature. The clear intendment of the legislature was that it would be obligatory for the plaintiffs to institute suits only in the courts mentioned in Section 80 of the Railways Act for enforcement of the claims for compensation against the railways.

21. After a consideration of the matter, we are inclined to the view that the reasoning of and the conclusion reached by the Full Bench of the Calcutta High Court that the new Section 80 is a self-contained provision are sound and require to be preferred to the view expressed by the Assam and the Madras High Courts. The view of the Full Bench is to be preferred having regard to the weight and preponderance of the relevant interpretatory criteria. No appeal, in our opinion, could be made to Section 21-A of the State Amendment to the Small Cause Courts Act either, inasmuch as that provision cannot be understood to have been intended to cover a situation of the present type. It does not exclude a special law applicable to and governing a distinct class of subject matter intended to be covered by that special law.

22. In the result, for the foregoing reasons, these appeals fail and are dismissed; but in the circumstances, without any directions as to costs.

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