Kaiser-I- Hind Pvt. Ltd. & Another Etc., ... vs National Textile Corporation Ltd., & ... on 25 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3404, 2002 AIR SCW 3971, 2002 (5) SLT 555, 2002 (9) SRJ 448, 2002 (4) LRI 246, 2002 (7) SCALE 95, 2002 (8) SCC 182, 2002 SCFBRC 626, (2002) 7 JT 339 (SC), (2003) 1 ALLMR 314 (SC), (2002) 6 ANDH LT 8, (2002) 5 ANDHLD 229, (2003) 1 MAD LJ 129, (2002) 4 SCJ 421, (2002) 6 SUPREME 608, (2002) 4 RECCIVR 445, (2002) 7 SCALE 95, (2003) 1 WLC(SC)CVL 1, (2003) 3 BOM CR 392

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Bench: Doraiswamy Raju

CASE NO.:
Appeal (civil) 2555 of 1991
Appeal (civil) 1320 of 1991
Appeal (civil) 1351 of 1991
Appeal (civil) 2218 of 1991
Appeal (civil) 2623 of 1991
Appeal (civil) 3047 of 1991
Appeal (civil) 3053 of 1991

PETITIONER:
Kaiser-I- Hind Pvt. Ltd. & Another Etc., Etc.

RESPONDENT:
National Textile Corporation Ltd., & Others Etc., Etc.

DATE OF JUDGMENT: 25/09/2002

BENCH:
Doraiswamy Raju.

JUDGMENT:

J U D G M E N T D. RAJU, J.

I have carefully gone through the judgment prepared by learned brother Justice M.B. Shah, dismissing the appeals and other connected writ and allied petitions and I am in respectful agreement with the same. Yet, having regard to the nature of issues involved and the likelihood of recurrence of such question, in the light of similar and frequent recourse often made to Article 254(2) of the Constitution, I wish to place on record some of my views also in the matter.

The factual background, the details relating to the decision arrived at by the Bombay High Court and the contentions raised on behalf of the appellants/petitioners before us have been adverted to in detail in the judgment of Shah, J. and I do not want to refer to them and further burden this judgment. Article 254(1) declares that, if any provision of a law including an 'existing law' made by the legislature of a State is 'repugnant' to any provision of a law enacted by the Parliament, which it is competent to enact, or to any provision of an existing law, with respect to 'one of the matters' enumerated in the concurrent list, subject to the exception provided in Clause (2) of Article 254, the law made by the Parliament, whether passed before or after the law made by the State Legislature concerned or the existing law, as the case may be, shall prevail and to that extent of repugnancy, the State law shall be void. The exception engrafted in Clause (2) to enable the State law to prevail in that State, the Legislature of which has enacted it, notwithstanding its repugnancy, as above, as long as both the laws deal with a concurrent subject, will enure to its benefit, `if it has been reserved for the consideration of the President and has received his assent', under the said provision of the Constitution of India. Thus, the sweep of mandate and serious nature of the result flowing from the assent renders, in my view, the very exercise of power by the President and the attendant formalities whereof, as of great significance and vitally important, and not a mere routine or mechanical exercise. Despite, such assent having been obtained, power of the Parliament to enact, 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, with the assent envisaged under Clause (2) of Article 254 has also been conserved and preserved in the proviso to the said clause. In substance, the Parliament has undisputed power to undo the effect or consequences flowing from the presidential assent obtained under Clause (2), by enacting a subsequent law creating once more a 'repugnancy' and thereby override or repeal impliedly, to the extent of such repugnancy, the State law.

The assent of the President envisaged under Article 254 (2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general or indefinite in the terms sought for to claim that once sought and obtained as well as published, a curtain or veil is drawn, to preclude any probe or contention for consideration that what was sought and obtained was not really what should and ought to have been, to claim the protection envisaged under Clause (2) in respect of a particular State law vis--vis or with reference to any particular or specified law on the same subject made by the Parliament or an existing law, in force. The repugnancy envisaged under Clause (1) or enabled under Clause (2) to get excepted from under the protective coverage of the assent obtained from the President, is such that there is a legislation or legislative provision(s), covering and operating on the same field or identical subject matter made by both the Union and the State, both of them being competent to enact in respect of the same subject matter or the legislative field, but the legislation by the Parliament has come to occupy the entire field. Necessarily, in the quasi-federal structure adopted for the nation, predominance is given to the law made by the Parliament and in such circumstances only the State law which secured the assent of the President under Clause (2) of Article 254 comes to be protected, subject of course to the powers of Parliament under the Proviso to the said clause. Therefore, the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the State law concerned. This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under clause (2) of Article 254, to

enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of any standardized or stipulated form in which it is to be sought for, should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follows, i.e., the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about.

The mere forwarding of a copy of the bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central law or provisions with reference to which, the predominance is claimed or purported to be claimed. The deliberate use of the word 'consideration' in clause (2) of Article 254, in my view, not only connote that there should be an active application of mind, but also postulate a deliberate and careful thought process before taking a decision to accord or not to accord the assent sought for. If the object of referring the State law for consideration is to have the repugnancy resolved by securing predominance to the State law, the President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and desirabilities involved therein, though may not be obliged to write a judgment in the same manner, the courts of law does, before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made by the Parliament. Protection cannot be claimed for the State law, when questioned before courts, taking cover under the assent, merely asserting that it was in general form, irrespective of the actual fact whether the State claimed for such protection against a specific law or the attention of the President was invited to at least an apprehended repugnancy vis--vis the particular Central law. In the teeth of innumerable Central laws enacted and in force on concurrent subjects enumerated in List III of the VIIth Schedule to the Constitution, and the hoard of provisions contained therein, artificial assumptions based on some supposed knowledge of all those provisions and the presumed regularity of official acts, cannot be blown out of proportion, to do away with an essential exercise, to make the 'assent' meaningful, as if they are empty formalities, except at the risk of rendering Article 254 itself a dead letter or mere otiose. The significant and serious alteration in or modification of the rights of parties, both individuals or institutions resulting from the 'assent' cannot be overlooked or lightly brushed aside as of no significance, whatsoever. In a Federal structure, peculiar to the one adopted by our Constitution it would become necessary for the President to be apprised of the reason as to why and for what special reason or object and purpose, predominance for the State law over the Central law is sought, deviating from the law in force made by the Parliament for the entire country, including that part of the State. When this Court observed in Gram Panchayat of Village Jamalpur vs. Malwinder Singh & Others [(1985) 3 SCC 661], that when the assent of President is sought for a specific purpose the efficacy of the assent would be limited to that purpose and cannot be extended beyond it, and that if the assent is sought and given in general terms so as to be effective for all purposes different considerations may legitimately arise, it cannot legitimately be contended that this court had also declared that reservation of the State law can also be by mere reference to Article 254 (2) alone with no further disclosures to be made or that the mere forwarding of the bill, no other information or detail was either a permissible or legalized and approved course to be adopted or that such course was held to be sufficient, by this Court, to serve

the purpose of the said Article. The observation 'general terms' need to be understood, in my view, a reference to a particular law as a whole in contrast to any one particular or individual in the said law and not that, it can be even without any reference whatsoever. The further observation therein, "not only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but his assent was sought for a different, specific purpose altogether", would belie any such claim. Per contra, it would only reinforce the principle that the consideration as well as the decision to accord consent should be a conscious one, after due application of mind, relevant and necessary for the purpose. Though, submission of a thesis on the various aspects of repugnancy involved may not be the requirement, the reservation for 'consideration' would necessarily obligate an invitation of the attention of the President as to which of the pre-existing central enactments or which provisions of those enactments are considered or apprehended to be repugnant, with reference to which the assent envisaged in Article 254 (2) is sought for. This becomes all the more necessary also for the reason that the repugnancy in respect of which predominance is sought to be secured must be shown to exist or apprehended, on the date of the State law and not in vacuum to cure any and every possible repugnancy in respect of all laws irrespective of whether it was in the contemplation or not of the seeker of the assent or of the President at the time of 'consideration' for according assent.

This Court has, no doubt, held that the assent accorded by the President is not justifiable, and courts cannot spell out any infirmity in the decision arrived at, to give the assent. Similarly, when the President was found to have accorded assent and the same was duly published, it cannot be contended that the assent was not really that of the President, as claimed. It is also not given to anyone to challenge the decision of the President according assent, on merits and as to its legality, propriety or desirability. But that is not the same thing as approving an attempt to draw a blanket or veil so as to preclude an examination by this court or the High Court as to the justifiability and sufficiency or otherwise of the protection or predominance claimed for the State law over the law made by the Parliament or the existing law, based upon the assent accorded, resulting at times in substantial alteration, change or modification in the rights and obligations of citizen, including the Fundamental Rights. When the Constitution extends a form of protection to a repugnant State law, permitting predominance and also to hold the field in the place of the law made by the Centre, conditioned upon the reservation of the State law for consideration of the President and obtaining his assent, it is to be necessarily viewed as an essential prerequisite to be effectively and meticulously fulfilled before ever availing of the protection and the same cannot be viewed merely as a ceremonial ritual. If such a vitally essential procedure and safeguard is to be merely viewed as a routine formality which can be observed in whatever manner desired by those concerned and that it would be merely enough, if the assent has been secured howsoever obtained, it would amount to belittling its very importance in the context of distribution of legislative powers and the absolute necessity to preserve the supremacy of the Parliament to enact a law on a concurrent topic in List III, for the entire country. It would also amount to acceptance of even a farce of compliance to be actual or real compliance. Such a course could not be adopted by Courts, except by doing violence to the language, as well as the scheme, and very object underlying Article 254 (2).

Different provisions of the Constitution envisage the grant of assent by the President as well the Governor of a State. Article 111 provides for the assent of the President to a Bill passed by the Houses of Parliament, in the same manner in which Article 200 empowers the Governor of a State in respect of a Bill passed by the Legislative Assembly or by the Houses of the Legislature where there is a Legislative Council in addition to the Assembly. The Parliament for the Union consists of the President and two Houses as the Legislature of States consist of the Governor and the House or Houses, as the case may be (vide Articles 79 and 168). The policy making executive power of the Union also vest with the President, as the executive power of the State vest with the Governor, and those powers have to be exercised with the aid and advice of the council of ministers, for the Union headed by the Prime Minister and for the State to be headed by the Chief Minister. The President or the Governor, as the case may be, as and when a Bill after having been passed is presented, may accord assent or as soon as possible thereafter return the Bill to the Houses with a message requesting to reconsider the Bill or any provisions thereof, including the introduction of any amendment as recommended in his message and if thereafter the Houses on reconsideration of the Bill, pass the Bill again with or without amendment and present the same for the assent, the President/Governor, as the case may be, shall not withhold his assent. Being an exercise pertaining to expression of political will, apparently, the will of the people expressed through the legislation passed by their elected representatives is given prominence by specifically providing for a compulsory consent or assent. The same could not be said with reference to the 'assent' of the President envisaged under Articles 31A, 31C, 254 (2) and 304 (b) of the Constitution. In my view, the 'assent' envisaged in these Articles by the very nature and character of the powers conferred constitute a distinct class and category of their own, different from the normal 'assent' envisaged under Articles 111 of the President or 200 of the Governor. Article 201 also would indicate that even when for the second time the Houses of the State Legislature passes the Bill and presented for 'consideration', there is no compulsion for the President to accord assent. Therefore, the reservation of any Bill/Act for the `consideration' of the President for according his assent, keeping in view, also the avowed object envisaged under Article 254 (2), renders it qualitatively different from the ordinary assent to be given by the President to a Bill passed by the Parliament or that of the Governor to a Bill passed by the Legislature(s) of the State concerned.

The assent of the President or the Governor, as the case may be, is considered to be part of the legislative process only for the limited purpose that the legislative process is incomplete without them for enacting a law and in the absence of the assent the Bill passed could not be considered to be an Act or a piece of legislation, effective and enforceable and not to extend the immunity in respect of procedural formalities to be observed inside the respective houses and certification by the presiding officer concerned of their due compliance, to areas or acts outside and besides those formalities . The powers actually exercised by the President, at any rate, under Articles 31A, 31C, 254 (2) and 304 (b) is a special constituent power vested with the Head of the Union, as the protector and defender of the Constitution and safety valve to safeguard the Fundamental Rights of citizens and Federal structure of the country's polity as adopted in the Constitution. A genuine, real and effective consideration would depend upon specific and sufficient information being provided to him inviting, at any rate, his attention to the Central law with which the State law is considered or apprehended to be repugnant, and in the absence of any effort or exercise shown to have been undertaken, when questioned before courts, the State law cannot be permitted or allowed to have

predominance or overriding effect over that Central enactment of the Parliament to which no specific reference of the President at all has been invited to. This, in my view, is a must and an essential requirement to be satisfied; in the absence of which the 'consideration' claimed would be one in vacuum and really oblivious to the hoard of Legislations falling under the Concurrent List in force in the country and enacted by the Parliament. To uphold as valid the claim for any such blanket assent or all round predominance over any and every such law whether brought to the notice of the President or not, would amount to legitimization of what was not even in the contemplation or consideration on the basis of some assumed 'consideration'. In order to find out the real state of affairs as to whether the 'Assent' in a given case was after a due and proper application of mind and effective 'consideration' as envisaged by the Constitution, this court as well as the High Court exercising powers of judicial review are entitled to call for the relevant records and look into the same. This the courts have been doing, as and when considered necessary, all along. No exception therefore could be taken to the High Court in this case adopting such a procedure, in discharge of its obligations and exercise of jurisdiction under the Constitution of India.