Supreme Court of India
Vijay Kumar Sharma & Ors. Etc vs State Of Karnataka & Ors. Etc on 27 February, 1990
Equivalent citations: 1990 AIR 2072, 1990 SCR (1) 614
Author: M Rangnath
Bench: Misra Rangnath

PETITIONER:
VIJAY KUMAR SHARMA & ORS. ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS. ETC.

DATE OF JUDGMENT27/02/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
SAWANT, P.B.
RAMASWAMY, K.

CITATION:
1990 AIR 2072 1990 SCR (1) 614
1990 SCC (2) 562 JT 1990 (2) 448
1990 SCALE (1)342

ACT:
Karnataka Contract Carriages (Acquisition) Act, 1976: ss. 14, & 20--Whether repugnant to ss. 74 & 80, Motor Vehicles Act, 1988--State Act whether impliedly repealed by Parliamentary Act--State Act whether hit by Article 254 of the Constitution.

HEADNOTE:
Constitution of India, Article 254.' Repugnancy between the Parliamentary Act and the State Act in respect of matters, in the Concurrent List, Seventh Schedule--When arises--Karnataka Contract Carriages (Acquisition) Act, 1976---Whether repugnant to the Motor Vehicles Act, 1988.

Statutory interpretation-Doctrine of pith and substance or dominant purpose--Scope of--Whether applicable to find repugnancy under Article 254 of the Constitution between Parliamentary and State laws in respect of matters in List 111. Seventh Schedule to the Constitution.

The Karnataka Contract Carriages (Acquisition) Act, 1976 enacted by the State Legislature by taking aid of Entry 42 List III of the Seventh Schedule and Articles 31 and 39 (b) and (c) of the Constitution was reserved for consideration

and received the assent of the President of March 11, 1976. Section 4 of that Act provided for vesting of contract carriages along with the respective permits and/or certificates of registration issued under the Motor Vehicles Act, 1939 in the State absolutely free from encumbrances. Sub-section (1) of s. 14 prohibited applications for fresh permits or renewal of existing permits on or from the date of vesting. Section 14(2) provided for abatement of all applications, appeals or revisions pending before the appropriate authority as on the notified date. Sub-section (1) of s. 20 provided for cancellation of, notwithstanding anything in the 1939 Act, all contract carriage permits granted or renewed in respect of any vehicle other than a vehicle acquired under the Act or belonging to the State Road Transport Corporation. Sub-section (2) entitled the Corporation to the grant or renewal of contract carriage permits to the exclusion of all other persons, while sub-section (3) restrained the authority concerned from
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entertaining applications from persons other than the Corporation.

Section 73 of the Motor Vehicles Act, 1988 (enacted to replace the 1939 Act) lays down the mode of application for a contract carriage permit. Section 74(1) empowers the Regional Transport Authority to grant such permits. Sub-section (2) enumerates conditions that could be attached to such permit. Sub-section (3) empowers the State Government when directed by the Central Government to limit the number of contract carriages on the city routes. Under s. 80(1) such application could be made at any time. Sub-section (2) posits that a Regional Transport Authority shall not ordinarily refuse to grant such application. Section 217(1) repealed all the laws which were inconsistent with the provisions of the Act.

The petitioners, a group of contract carriage operators who were denied permits that they had applied for under ss. 73, 74 and 80 of the Motor Vehicles Act, 1988 in view of the provisions of ss. 14 and 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976, filed writ petitions under Article 32 of the Constitution questioning the action of the R.T.A. It was contended that the provisions of ss. 14 and 20 of the Karnataka Act were in direct conflict with the provisions of ss. 74 and 80(2) of the M.V. Act, 1988 in as much as while the Regional Transport Authority was enjoined by the said provisions of the 1988 Act ordinarily not to refuse to grant an application for permit of any kind, the said provisions of the Karnataka Act prohibited any person from applying for, and any officer or authority from entertaining or granting application for running any contract carriage in the State; that since the M.V. Act, 1988 was a later legislation operating in the same area, it should be deemed to have impliedly repealed the provisions of ss. 14 and 20 of the Karnataka Act even if the latter Act had received the

assent of the President, in view of the proviso to sub-clause (2) of Article 254 of the Constitution; that when there is a repugnancy under Article 254 of the Constitution, the doctrine of pith and substance does not apply, and even if some of the provisions of the State Legislation are in conflict with some of the provisions of the Central legislation, the conflicting provisions of the State legislation, will be invalid and that, therefore, their applications under ss. 74 and 80 were maintainable without reference to the provisions of the Karnataka Act.

For the respondents it was contended that the Acquisition Act was made in exercise of the power under a different entry and was not on the same subject, therefore, the matter did not come within the ambit of Art. 254 of the Constitution, and that the Acquisition Act having been
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reserved for consideration under Art. 254(2) and having received the assent of the President, it prevails over the Parliamentary Act in the State of Karnataka.

On the question: Whether there is repugnancy between the provisions of ss. 14 and 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976 and ss. 74 and 80 of the Motor Vehicles Act, 1988 and whether the doctrine of dominant purpose and pith and substance is applicable while examining the repugnancy of the two statutes?

Per Misra, J. (Concurring with Sawant, J.)

1. There is no direct inconsistency between the Karnataka Contract Carriages (Acquisition) Act, 1976 and the Motor Vehicles Act, 1988. [631G-H]

2.1 In cl. (1) of Art. 254 of the Constitution it has been clearly indicated that the competing legislations must be in respect of one of the matters enumerated in the Concurrent List. In the instant case, the State Act was an Act for acquisition and came within Entry 42 of The Concurrent List. The Parliamentary Act on the other hand is a legislation coming within Entry 35 of the Concurrent List. Therefore, the said two Acts as such do not relate to one common head of legislation enumerated in the Concurrent List. Clause (2) also refers to the law with respect to the same matter. [628F; 629A]

2.2 Repugnancy between two statutes would arise if there is direct conflict between the two provisions and if the law made by Parliament and the law made by the State Legislature occupy the same field. In the instant case, the State Act intended to eliminate private operators from the State in regard to contract carriages acquired under the existing permits, vehicles and ancillary property and with a view to giving effect to a monopoly situation for the State Undertaking made provision in s. 20. The Parliamentary Act does not purport to make any provision in regard to acquisition of contract carriage permits which formed the dominant theme or the core of the State Act. Nor does it in s. 73 and s. 74 indicate as to who the applicant shall be while laying down

how an application for a contract carriage permit shall be made and how such a permit shall be granted. Section 80 of the Parliamentary Act does contain a liberalised provision in the matter of grant of permits but even then there again the ancillary provision contained in s. 20 of the State Act to effectuate acquisition does not directly run counter to the 1988 provision. [630G; 631C]

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There does not thus appear to be any repugnancy between the two Acts for invoking Art. 254 of the Constitution. [631D-E]

Bar Council of Uttar Pradesh v. State of U.P. & Anr., [1973] 2 SCR 1073; Kerala State Electricity Board v. Indian Aluminium Company, [1976] 1 SCR 552; Deep Chand v. State of Uttar Pradesh & Ors., [1959] 2 Suppl. SCR 8; T. Barai v. Henry Ah Hoe & Anr., [1983] 1 SCR 905; Hoechst Pharmaceuticals Ltd. & Anr. v. State of Bihar & Ors., [1983] 3 SCR 130; Zaverbhai Amaidas v. State of Bombay, [1955] 1 SCR 799; M. Karunanidhi v. Union of India, [1979] 3 SCR 254 and State of Karnataka & Anr. v. Ranganatha Reddy & Anr. [1978] 1 SCR 641, referred to.

Per Sawant, J:

1. There is no repugnancy in the provisions of ss. 14 and 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976 and ss. 74 and 80 of the Motor Vehicles Act, 1988. Hence the provisions of Article 254 of the Constitution do not come into play. [652F; 636C]

2.1 Whenever repugnancy between the State and Central Legislation is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter. The test for determining the same is to find out the dominant intention of the two legislations. If the dominant intention of the two legislations is different, they cover different subject matters. If the subject matters covered by -'.he legislation are thus different, then merely because the two legislations refer to some allied or cognate subjects they do not cover the same field. The legislation to be on the same subject matter must further cover the entire field covered by the other. [652C-D]

A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation. But such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). Both the legislations must be substantially on the same subject to attract the Article. [652E]

Municipal Council Palai v.T.J. Joseph & Ors., [1964] 2 SCR 87; Tika Ramji & Ors. etc. v. State of U.P. & Ors., [1956] SCR 393 and State of Karnataka & Anr. etc. v. Ranganatha Reddy & Anr. etc., [1978] 1 SCR 641, referred to.

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Ratan Lal Adukia v. Union of India, [1989] 3 SCR 537,

distinguished.

2.2 In the instant case, the objects and the subject matters of the two enactments were materially different. The Karnataka Act was enacted by the State Legislature for acquisition of contract carriages under Entry 42 of the Concurrent List read with Article 31 of the Constitution to give effect to the provisions of Articles 39(b) and (c) thereof. The MV Act 1988 on the other hand was enacted by the Parliament under Entry 35 of the Concurrent List to regulate the operation of the motor vehicles. They thus occupy different areas. [636C, B-C]

2.3 Unlike the MV Act 1988 which was enacted to regulate the operation of the motor vehicles, the object of the Karnataka Act was, not only the regulation of the operation of the motor vehicles. Nor was its object merely to prevent the private owners from operating their vehicles with the exclusive privilege of such operation being reserved in favour of the State or the State Undertaking. For if that were the only object, the same could have been achieved by the Transport Undertakings of the State following the special provisions relating to State Transport Undertakings in Chapter IV-A of the Motor Vehicle Act, 1939 which was in operation when the Karnataka Act was brought into force. The very fact that instead the State undertook the exercise of enacting the Karnataka Act shows that the object of the State Legislature in enacting it was materially different i.e. to nationalise the contract carriage services in the State with a view to provide better transport facilities to the public and also to prevent concentration of wealth in the hands of the few and to utilise the resources of the country to subserve the interests of all. [634D-F; B-C]

3.1 A comparison of the provisions of the MV Act, 1939 and MV Act, 1988 shows that the latter has merely replaced the former. The special provisions relating to the State Transport Undertakings which are contained in Chapter VI of the MV Act, 1988 are pari-materia with those of Chapter IV-A of the MV Act, 1939 with only this difference that whereas under the old Act it was the State Transport Undertaking which had to prepare a scheme for running and operating the transport service by it in relation to any area or route or portion thereof exclusively, under the new Act such a scheme has to be prepared by the State Government itself. There is no difference in the legal consequences of the schemes under the two enactments. Both envisage the operation of the services by the State Transport Undertaking to the exclusion of the rest, and cancellation of the existing permits and compensation only for the deprivation of the balance of the period of the permit. No acquisi-

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tion of the vehicles or the paraphernalia connected with such vehicles is envisaged as is the case under the Karnataka Act. [634G; 635E-G]

3.2 Section 98 of the MV Act 1988 in terms clearly

states (as did Section 68B of the MV Act 1939) that Chapter VI relating to the special provisions about the State Transport Undertaking and the rules' and orders made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Sections 74 and 80 relating to the grant of the contract carriage permit and the procedure in applying for the grant of such permits respectively, are in Chapter V. This means that when under Chapter VI, a scheme is prepared by the State Govt. entrusting the contract carriage services in relation to any area or route or portion thereof, to a State Transport Undertaking to the exclusion---complete or partial of other persons, the provisions of ss. 74 and 80 would have no application, and the private transport operators cannot apply for the grant of contract carriage permits under s. 80 nor can such permits be granted by the Transport Authority. The MV Act 1988 thus also makes a provision for nationalisation of routes, and envisages a denial of permits to private operators when routes are so nationalised. Hence it cannot be said that there was a conflict between the provisions of the Karnataka Act and the M.V. Act, 1988. [637H; 638D]

4. When the legislative encroachment is under consideration the doctrine of pith and substance comes to the aid to validate a legislation which would otherwise be invalid for the very want of legislative competence. When the repugnancy between the two legislations is under consideration, what is in issue is whether the provision of the State enactment though otherwise constitutionally valid, has lost its validity because the Parliament has made a legislation with a conflicting provision on allegedly the same matter. If it is open to resolve the conflict between two entries in different Lists, viz., the Union and the State List by examining the dominant purpose and therefore the pith and substance of the two legislations, there is no reason why the repugnancy under Article 254 of the Constitution between the provisions of the two legislations under different entries in the same List, viz. the Concurrent List should not be resolved by scrutinizing the same by the same touchstone. What is to be ascertained in each case is whether the legislations are on the same matter or not. In both cases the cause of conflict is the apparent identity of the subject matters. The tests for resolving it therefore cannot be different. [639E-H]
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Meghraj & Ors. v. Allahrakhiya & Ors., AIR 1942 FC 27 distinguished.

Per K. Ramaswamy, J. (Dissenting)

1. Section 14(1) of Karnataka Contract Carriages (Acquisition) Act, 1976 to the extent of prohibiting to make fresh application for grant of permits to run the contract carriages other than those acquired under that Act and the embargo and prohibition created under s. 20(3) thereof on

the respective Regional Transport Authority in the State of Karnataka to invite/receive the application to consider the grant of permits to such contract carriages according to law, are void. [686C-D]

2.1 The Parliament and the legislature of a State derive their exclusive power to legislate on a subject/subjects in List I and List II of Seventh Schedule to the Constitution from Art. 246(1) and (3) respectively. Both derive their power from Art. 246(2) to legislate upon a matter in the Concurrent List III subject to Art. 254 of the Constitution. The entries in the three lists merely demarcate the legislative field or legislative heads. Their function is not to confer powers on either the Parliament or the State Legislature. [682E-D]

Subrahmanyam Chettiar v. Muttuswami Goundan., AIR 1941 FC 47; Governor General in Council v. The Reliegh Investment Co. Ltd., [1944] FCR 229; Harakchand Ratanchand Banthia v. Union of India, [1970] 1 SCR 479 AND Union of India v.H.S. Dhillon, [1972] 2 SCR 33, referred to.

2.2 Clause (1) of Art. 254 posits as a rule that in case of repugnancy or inconsistency between the State Law and the Union Law relating to the same matter in the Concurrent List occupying the same field, the Union law shall prevail and the State law will fail to the extent of the repugnancy or inconsistency whether the Union law is prior or later in point of time to the State law. To this general rule, an exception has been engrafted in cl. (2) thereof, viz., provided the State law is reserved for consideration of the President and it has received his assent, and then it will prevail in that State notwithstanding its repugnancy or inconsistency with the Union law. This exception again is to be read subject to the proviso to cl. (2) thereof, which empowers the Parliament to make law afresh or repeal or amend, modify or vary the repugnant State law and it became void even though it received President's assent. [659D-F]
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2.3 The question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and it is impossible to obey without disobeying the other, or conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. It matters little whether the provisions fall under one or other entry in the Concurrent List. The substance of the same matter occupying the same field by both the pieces of the legislation is material and not the form. The repugnancy to be found is the repugnancy of the provisions of the two laws and not the predominant object of the subject matter of the two laws. The proper test is whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If both the pieces of legislation deal with separate and distinct matters though of cognate and allied character repugnancy does not arise. [660A-B; 675B-C;

660C; 674H; 675A]

Tika Ramji v. State of U.P., [1956] SCR 393; A.S. Krishna v. Madras State, [1957] SCR 399; Prem Nath Kaul v. State of J &K, [1952] 2 Supp. SCR 273; Bar Council of U.P.v. State of U.P., [1973] 2 SCR 1073; Deep Chand v. State ofU. P., [1959] Supp. 2 SCR 8; State of Orissa v.M.A. Tulloch & Cρ [1964] 4 SCR 461; State of Assam v. Horizon Union, [1967] 1 SCR 484; State ofJ & K v.M.S. Farooqi, [1972] 3 SCR 881; Kerala State Electricity Board v. Indian Aluminium Co., [1976] I SCR 552; Basu's Commentary on the Constitution of India (Silver Jubilee Edition) Volume K 144; Clyde Engineering Co. v. Cowburn, [1926] 37 CLR 466; Hume v. Palmer, [1926] 38 CLR 441; Brisbane Licensing Court, [1920] 28 CLR 23; Colvin v. Bradley Bros. Pvt. Ltd., [1943] 68 CLR 151; In Re Ex Parte Maclean, [1930] 43 CLR 472; Wenn v. Attorney General (Victoria), [1948] 77 CLR 84; O' Sullivan v. Noarlunga Meat Co. Ltd., [1954] 92 CLR 565; O'Sullivan v. Noarlunga Meat Co. Ltd., [1957] AC 1 and Blackley v. Devondale Cream (Vic.) Pvt. Ltd., [1968] 117 CLR 253, referred to.

2.4 Section 14 read with s. 20 of the Acquisition Act freezed the right of a citizen to apply for and to obtain permit or special permit to run a contract carriage in terms of the permit and monopoly to run a contract carriage was conferred on the S.T.U., Karnataka. But the M.V. Act, 1988 evinces its intention to liberalise the grant of contract carriage permit by saying in s. 80(2) that the Regional Transport Authority "shall not ordinarily refuse to grant the permit". It also confers the right on an applicant to apply for and authorises the Regional Transport Authority to grant liberally contract carriage permit except in the area covered by s. 80(3) and refusal appears to be an exception, that too, obviously for reasons to be recorded. It may be
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rejected if the permit applied for relate to an approved or notified route. The M.V. Act accords the right, while the Acquisition Act, negates and freezes the self-same right to obtain a permit and to run a contract carriage and prohibits the authorities to invite or entertain an application and to grant a permit to run contract carriage. The Act and the relevant rules cover the entire field of making an application in the prescribed manner and directs the Regional Transport Authority to grant permit with condition attached thereto to run contract carriages vide ss. 66(1), 73, 74 and 80. Thus the existence of two sets of provisions in the Motor Vehicles Act 59 of 1988 and Acquisition Act 21 of 1976 is sufficient to produce conflicting results in their operation in the same occupied filed. The two sets of provisions run on collision course, though an applicant may waive to make an application for a permit. Thereby there exists the operational incompatibility and irreconcilability of the two sets of provisions. Sections 14(1) and 20(3) of the Acquisition Act are repugnant and inconsistent to ss. 73, 74 and 80

of the Act. By operation of proviso to Art. 254(2) of the Constitution, the embargo created by ss. 14(1) and 20(3) of the Acquisition Act to make or invite an application and injuction issued to Regional Transport Authority prohibiting to grant contract carriage permit to anyone except to S.T.U., Karnataka within the State of Karnataka became void. [682H; 683E]

3.1 The Parliament with a view to lay down general principles makes law or amends the existing law. The State Legislature still may feel that its local conditions may demand amendment or modification of the Central Law. Their reserve power is Art. 254(2). After making the Act 59 of 1988 the power of the State Legislature under Art. 254(2) is not exhausted and is still available to be invoked from time to time. But unless it again enacts law and reserves it for consideration and obtains the assent of the President afresh, there is no prohibition for the petitioners to make applications for the grant of contract carriage permits under the Act and consideration and grant or refusal thereof according to law by the concerned Regional Transport Authority. [685E; 686B]

3.2 The Karnataka State Legislature is, therefore, at liberty to make afresh the law similar to ss. 14(1) and 20(3) of the Acquisition Act with appropriate phraseology and to obtain the assent of the President. [686B]

4. Parliament may repeal the State law either expressly or by necessary implication but Courts would not always favour repeal by implication. Repeal by implication may be found when the State law is repugnant or inconsistent with the Union law in its scheme or opera:ion. The principle would be equally applicable to a question under
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Article 254(2) of the Constitution. In the instant case, s. 217(1) of the Union law does not expressly repeal ss. 14(1) and 20(3) of the State law. They are repugnant with the Union law. [676C-D; 670E-F; 669F]

Zaveribhai v. State of Bombay, [1955] 1 SCR 799; M. Karunanidhi v. Union of India, [1979] 3 SCR 254; T. Barai v. Henry Ah Hoe, [1983] 1 SCR 905 and M/s Hoechst Pharmaceuticals Ltd. v. State of Bihar, [1983] 3 SCR 130, referred to.

5. For the applicability of the principle that special law prevails over the general law, the special law must be valid law in operation. Voidity of law obliterates it from the statute from its very inception. In the instant case, since ss. 14(1) and 20(3) are void the said principle is not applicable. [683F]

Justiniano Augusto De Peidada Barreto v. Antonia Vicente De Fonseca & Ors., [1979] 3 SCR 494, distinguished.

6.1 The doctrine of pith and substance or the predominant purpose or true nature and character of law is applied to determine whether the impugned legislation is within the legislative competence under Arts. 246(1) and 246(3) of the Constitution, and to resolve the conflict of jurisdiction.

If the Act in its pith and substance fails in one List it must be deemed not to fail in another List, despite incidental encroachment and its validity should be determined accordingly. The pith and substance rule, thereby, resolves the problem of overlapping of "any two entries of two different Lists vis-a-vis the Act" on the basis of an inquiry into the "true nature and character" of the legislation as a whole and tries to find whether the impugned law is substantially within the competence of the Legislature which enacted it, even if it incidentally trespasses into the legislative field of another Legislature. [680C; 677F; 678A1

6.2 The doctrine has no application when the matter in question is covered by an entry or entries in the Concurrent List and has occupied the same field both in the Union and the State Law. It matters little as in which entry or entries in the Concurrent List the subject-matter falls or in exercise whereof the Act/provision or provisions therein was made. The Parliament and Legislature of the State have exclusive power to legislate upon any subject or subjects in the Concurrent List. The question of incidental or ancillary encroachment or to trench into forbidden field does not arise. The determination of its 'true nature and character also is immaterial. [680C-D]

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Prafulla Kumar v. Bank of Commerce, Khulna, AIR 1947 PC 60; State of Bombay v.F.N. Balsara, [1951] SCR 682; Atiabari Tea Co.Ltd. v. State of Assam, [1961] 1 SCR 809 and Meghraj & Ors. v. Allaharakhiya & Ors., AIR 1942 FC 27, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 723 of 1989 etc.

(Under Article 32 of the Constitution of India). G. Ramaswamy, Additional Solicitor General (N.P.), F.S. Nariman, G.L. Sanghi, G.Prabhakar, M. Rangaswamy, N.D.B. Raju, Ms. C.K. Sucharita, S.K. Agnihotri, P.R. Ramashesh, K.R. Nagaraja and Ms. Anita Sanghi for the appearing par- ties.

The following Judgments of the Court were delivered:

RANGANATH MISRA, J. I have the benefit of reading the judgment prepared by my esteemed brethren Sawant and K. Ramaswamy, JJ. Brother Sawant has taken the view that s. 20 of the Karnataka Act has not become void with the enforce- ment of the Motor Vehicles Act, 1988, while Brother K. Ramaswamy has come to the contrary conclusion. Agreeing with the conclusion of Sawant, J., I have not found it possible to concur with Ramaswamy, J. Since an interesting question has arisen and in looking to the two judgments I have found additional reasons to support the conclusion of Sawant. J., I proceed to indicate the same in my separate judgment. These applications under Article 32 of the Constitution by a group of disgruntled applicants for contract carriage permits call in question action of the concerned transport authorities in not entertaining

their applications under the provisions of the Motor Vehicles Act, 1988. Motor Vehicles Act (4 of 1939) made provision for grant of contract carriage permits. The Karnataka Contract Car- riages (Acquisition) Act (Karnataka Act 21 of 1976) received assent of the President on 11th of March. 1976. but was declared to have come into force from 30th of January, 1976, when the corresponding Karnataka Ordinance 7 of 1976 had come into force. The long title of the Act indicated that it was an Act to provide for the acquisition of contract car- riages and for matters incidental. ancillary or subservient thereto, and the preamble stated:

"Whereas contract carriages and certain other categories of public service vehicles are being operated in the State in a matter highly detrimental and prejudicial to public interest;

And whereas with a view to prevent such misuse and also to provide better facilities for the transport of passengers by road and to give effect to the policy of the State towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

And whereas for the aforesaid purposes it is considered necessary to provide for the acquisition of contract carriages and certain other categories of public service vehicles in the State and for matters incidental, ancillary or subservient thereto ..... "

Section 2 contains the declaration to the following effect: "It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Con- stitution of India and the acquisition therefore of the contract carriages and other property referred to in section

4."

Under ss 4 contract carriages owned or operated by contract carriage operators along with the respective per- mits and/or certificates of registration, as the case may be, vested in the State absolutely free from encumbrances, and compensation for such acquisition was provided under the scheme of the Act. Section 14 prohibited application for any permit or fresh permit or renewal of existing permits for running of any contract carriage in the State by any private operator and all pending proceedings in relation to grant or renewal abated. Consequential provisions were made in ss. 15 and 16 of the Act. Section 20 gave the Corporation the exclusive privilege of running contract carriages within the State to the exclusion of any provision under the 1939 Act. The vires of the Act was the subject-matter of the decision of this Court in a group of appeals in the case of the State of Karnataka & Anr. v. Shri Ranganatha Reddy & Anr., [1978] 1 SCR 641. A Seven Judge Bench upheld the validity of the statute holding that the impugned statute was an 'acquisi- tion Act' within the ambit of Entry 42 of the Concurrent List under Schedule VII of the Constitution. The Court took note of the fact that even though it may have had some incidental impact on inter-State trade or commerce it did not suffer from any lacuna on that count. Since the Act had been reserved for Presidential assent, to the extent s. 20 made provisions contrary to those in the Motor Vehicles Act of 1939, was taken to be valid under Art. 254(2) of the Constitution.

The Motor Vehicles Act (59 of 1988) being a Parliamen- tary legislation was brought into force with effect from 1.7. 1989. Under s. 1(2), the Act extended to the whole of India and, therefore, the Act became applicable to the State of Karnataka by the notification appointing the date of commencement of the Act.

The 1988 Act has admittedly liberalised the provisions relating to grant of permits of every class including con- tract carriages. Sections 73, 74 and 80 contain the relevant provisions in this regard. While s. 73 provides for an application for such permit, s. 74 contains the procedure for the consideration of the grant and s. 80 contains a general provision that the transport authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. It is the contention of the petitioners that with the enforcement of the Motor Vehicles Act of 1988 as a piece of central legislation, the provisions of s. 20 of the Karnataka Act became void to the extent the state law was inconsistent with the provisions of the 1988 Act and, therefore, by operation of the provisions contained in Art. 254 of the Constitution, s. 20 stood abrogated and the scheme of the 1988 Act became operative. The applications of the petitioners for grant of contract carriage permits were maintainable and should have been entertained and disposed of in accordance with the provi- sions of the 1988 Act.

It is the stand of the respondents, in particular of the Karnataka State Transport Undertaking, that the State Act is a legislation under a different entry and was not on the same subject. Therefore, the matter did not come within the ambit of Art. 254 of the Constitution. The State Act contin- ues to hold the field and the transport authorities had rightly refused to entertain the petitioners' applications.

The question for consideration is: Whether Art. 254(I) of the Constitution applies to the situation in hand and whether s. 20 of the Karnataka Act being inconsistent with the provisions of ss. 73, 74 and 80 of the 1988 Motor Vehi- cles Act became void. It would be convenient to extract the provisions of Art. 254 of the Constitution at this stage and recount the background in which such provision was warrant- ed. It is the common case of the parties that with the introduction of federalism and distribution of legislative powers and accepting a Concurrent List wherein in regard to specified subjects the Federal and the Federating State Legislatures had power to legislate, a provision of ration- alisation became necessary. Section 107 of the Government of India Act, 1935, contained the provision to deal with such a situation. The Constituent Assembly accepted a similar mechanism and added a proviso to clause (2) of Art. 254 to meet the difficulties experienced in the intervening years. The Article reads thus:

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repug- nancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concur- rent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legis- lature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

Though for some time there was difference of judicial opinion as to in what situation Art. 254 applies, decisions of this Court by overruling the contrary opinion have now concluded the position that the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List: Bar Council of Uttar Pradesh v. State of U.P. & Anr., [1973] 2 SCR 1073 and Kerala State Electricity Board v. Indian Aluminium Company, [1976] 1 SCR 552. This Court in Deep Chand v. State of Uttar Pradesh & Ors., [1959] 2 Suppl. SCR 8; T. Barai v. Henry Ah Hoe & Anr., [1983] 1 SCR 905 and Hoechst Pharmaceuticals Ltd. & Anr. v. State of Bihar & Ors., [1983] 3 SCR 130 has laid down that cl. (1) of Art. 254 lays down the general rule and cl. (2) is an exception thereto; the proviso qualifies the exception. Therefore, while interpreting Art. 254 this position has to be kept in view. The situation of the 1939 Motor Vehicles Act being existing law and the Karnataka Act containing provision repugnant to that Act with Presidential assent for the State Act squarely came within the ambit of cl. (2) of the Article. That is how the State Act had over- riding effect.

The consideration of the present question has to be within the ambit of cl. (1) as the State law is the earlier legislation and the Parliamentary Act of 1988 came later and it is contended that the State legislation has provisions repugnant to provisions made in the 1988 Act. There can be no controversy that if there is repugnancy, the Parliamen- tary legislation has to prevail and the law made by the State Legislature to the extent of repugnancy becomes void. In cl. (1) of Art. 254 it has been clearly indicated that the competing legislations must be in respect of one of the matters enumerated in the Concurrent List. The seven- Judge Bench examining the vires of the Karnataka Act did hold that the State Act was an Act for acquisition and came within Entry 42 of the Concurrent List. That position is not disputed before us. There is unanimity at the Bar that the Motor Vehicles Act is a legislation coming within Entry 35 of the Concurrent List. Therefore, the Acquisition Act and the 1988 Act as such do not relate to one common head of legislation enumerated in the Concurrent List and the State Act and the Parliamentary statute deal with different mat- ters of legislation.

The language of cl. (2) is also similar though applica- ble in a different situation. Apparently in one sense both the clauses operate on a similar level though in dissimilar context. In cl. (2) what is rele-

vant is the words: 'with respect to that matter'. A Consti- tution Bench of this court in Zaverbhai Amaidas v. State of Bombay, [1955] 1 SCR 799 emphasised that aspect. Venkatarama Ayyar, J. pointed out:

"The important thing to consider with reference to this provision is whether the legislation is 'in respect of the same matter'. If the later legislation deals not with the matters which formed the subject of the earlier legisla- tion but with other and distinct matters though of a cognate and allied character, then Art. 254(2) will have no applica- tion."

A lot of light relevant to the aspect under considera- tion is available from another decision of a Constitution Bench of this Court: (M. Karunanidhi v. Union of India, [1979] 3 SCR 254) Atp. 263 of the Reports, it has been said: "It would be seen that so far as clause (1) of Article 54 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect of one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the mat- ters contained in List I, i.e., the Union List to the Sev- enth Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned. both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain condi- tions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are full.v inconsistent (Emphasis added) and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where, however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) or Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law fails within the four corners of the State List and en- trenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it

will prevail in the State and overrule the provisions of the Central Act in its applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the provision to Article 254."

In Deep Chand v. State of Uttar Pradesh, supra, this court had pointed out that repugnancy between two statutes would arise if there was direct conflict between the two provisions and if the law made by Parliament and the law made by the State Legislature occupied the same field. It has already been stated that the State Act intended to eli-

minate private operators from the State in regard to con- tract carriages acquired under the existing permits, vehi- cles and ancillary property and with a view to giving effect to a monopoly situation for the State undertaking made provision in s. 20 for excluding the private operators. The 1988 Act does not purport to make any provision in regard to acquisition of contract carriage permits which formed the dominant theme or the core of the State Act. Nor does it in s. 73 or s. 74 indicate as to who the applicant shall be while laying down how an application for a contract carriage permit shall be made and how such a permit shall be granted. Section 80 of the 1988 Act does contain a liberalised provi- sion in the matter of grant of permits but here again it has to be pointed out that the ancillary provision contained in s. 20 of the Acquisition Act to effectuate acquisition does not directly run counter to the 1988 provision. Section 20 of the State Act creates a monopoly situation in favour of the State undertaking qua contract carriages by keeping all private operators out of the filed. Since ss. 73, 74 and 80 of the 1988 Act do not contain any provision relating to who the applicants for contract carriages can or should be, and those sections can be applied without any difficulty to the applications of the State undertaking, and there does not appear to be any repugnancy between the two Acts for invoking Art. 254 of the Constitution. A provision in the State Act excluding a particular class of people for operating contract carriages or laying down qualifications for them would not run counter to the relevant provisions of the 1988 Act.

A number of precedents have been cited at the hearing and those have been examined and even some which were not referred to at the bar. There is no clear authority in support of the stand of the petitioners--where the State law is under one head of legislation in the Concurrent List; the subsequent Parliamentary legislation is under another head of legislation in the same List and in the working of the two it is said to give rise to a question of repugnancy. The State Act had done away with the private operators qua contract carriages within the State. It is true that the 1988 Act is applicable to the whole of India and, therefore, is also applicable to the State of Karnataka in the absence of exclusion of the State of Karnataka from its operation. But as has been pointed out already, there is no direct inconsistency between the two and on the facts placed in the case there is no necessary invitation to the application of cl. (1) of Art. 254 of the Constitution.

The writ petitions fail and are dismissed.

SAWANT, J. This group of petitions raises a common question of law viz. whether the Motor Vehicles Act, 1988 (hereinafter referred to as the MV Act 1988) has impliedly repealed the Karnataka Contract Carriages (Acquisition) Act, 1976 (hereinafter referred to as the Karnataka Act).

2. The petitioners claim a declaration that the provisions of Sec. 14 and 20 of the Karnataka Act are invalid because of their repugnancy with the provisions of the MV Act, 1988, and a direction to respondent nos. 2 and 3, namely the Karnataka State Transport Authority and the Karnataka Regional Transport Authority respectively, to consider their applications for the grant of contract carriage permits under Sec. 74 and 80 of the MV Act, 1988, without reference to the provisions of the Karnataka Act. The precise question that falls for consideration, therefore, is whether there is a repugnancy between the two legislations.

3. The Karnataka Act, as its title shows, was enacted to provide for the acquisition of contract carriages and for matters incidental, ancillary and subservient thereto. It was enacted under Entry 42 of the Concurrent List read with Article 31 of the Constitution, in furtherance of Article 39(b) and (c) thereof. This is evident from the preamble, and Section 2 of the Act. The preamble states that since the contract carriages and certain other categories of public service vehicles were being operated in the State in a manner highly detrimental and prejudicial to public inter- est, it was necessary to prevent the misuse, and to provide better facility for the transport of the passengers by road. It was also necessary to give effect to the policy of the State towards securing that the ownership and control of the material resources of the community were so distributed as best to subserve the common good and that the operation of the economic system did not result in the concentration of wealth and means of production to the common detriment. To effectuate the said intention it was considered necessary to enact the legislation. Section 2 of the Act makes a declaration in the following words:

"It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Con- stitution of India and the acquisition therefor of the contract carriages and other property referred to in Section

4."

Under Section 4 of the Act every contract carriage owned or operated by contract carriage operator along with the permit or the certificate of registration or both as the case may be, vested in the State Government absolutely and free from all encumbrances. Further, a11 rights, title and interest of the contract carriage operators in the lands, buildings, workshops and other places and all stores, instruments, machinery, tools, plants, apparatus and other equipments used for the maintenance, repair of, or otherwise in connection with the service of the contract carriage as the State Government may specify in that behalf and all books of accounts, registers, records and all other docu- ments of whatever nature relating to the contract carriages vested in the State Government absolutely and free from all encumbrances, and all the said property was deemed to have been acquired for public purpose. Section 6 provided for payment of compensation for the acquisition of all the said property.

Since the avowed object of the Act was two fold, namely

(i) to prevent the misuse of the operation of the contract carriages and to provide better facilities for the transport of passengers, and (ii) to give effect to the policy under- lying Clauses (b) and (c) of

Article 39 of the Constitution, it was also necessary to prevent the issue of fresh permits or renewal of the existing permits for running the contract carriages in the State to any private individual. Hence, Section 14 provided for a prohibition of the issue of fresh permit or renewal of the existing permit to any individual or the transfer of such permit to anyone except to the State Government or the Corporation which it may establish under the Karnataka State Road Transport Corporation Act, 1950. To make an alternative arrangement for running the contract carriages and to prevent both the misuse of the permits as well as concentration of wealth in the hands of a few indi- viduals, Section 20 of the Act provided that all contract carriage-permits granted or renewed till then would stand cancelled and the Corporation alone would be entitled to the grant or renewal of the said permits to the exclusion of all other persons, and that applications from persons other than the Corporation for the grant of such permit shall not be entertained.

In State of Karntaka & Anr. etc. v. Shri Ranganatha Reddy & Anr. etc., [1978] 1 SCR 641 this Court upheld the validity of the said Act holding, among other things, that the Act was for acquisition of property and was in the public interest and for a public purpose. The Act, according to the Court, had nationalised the contract transport serv- ice in the State and that was also for a public purpose as declared in the Act. It was also observed that if Articles 38 and 39 are to be given effect to, then the State has progressively to assume the predominant and direct responsibility for setting up new industrial undertakings which would also include development of transport facilities. The State has also to become agency for planned national development, and the socialistic pat- tern of society as the national objective required that public utility services should be in the public sector. The acquisition of road transport undertaking by the State, therefore, undoubtedly served the public purpose.

4. It is thus clear from the provisions of the Karnataka Act that the whole object of the Act is to nationalise the contract carriage service in the State with a view to put an end to the abuse of the contract carriage services by the private operators and to provide better transport facilities to the public, and also to prevent concentration of the wealth in the hands of the few and to utilise the resources of the country to subserve the interests of all. To secure the objective of the Act, it was also necessary to prohibit the grant of the contract carriage permits to private indi- viduals and to reserve them exclusively to the State Under- taking which was done by Sections 14 and 20 of the Act. Unlike the MV Act 1988, which is admittedly enacted by the Parliament under Entry 35 of the Concurrent List, to regu- late the operation of the motor vehicles, the object of the Karnataka Act is not only the regulation of the operation of the motor vehicles. Nor is its object merely to prevent the private owners from operating their vehicles with the exclu- sive privilege of such operation being reserved in favour of the State or the State Undertaking. For if that were the only object, the same could have been achieved by the Trans- port Undertakings of the State following the special provi- sions relating to State Transport Undertakings in Chapter IV-A of the Motor Vehicles Act, 1939 which was in operation when the Karnataka Act was brought into force. The very fact that instead, the State undertook the exercise of enacting the Karnataka Act shows that the object of the State Legis- lature in enacting it was materially different. This is also obvious from the various provisions of the enactment pointed out above.

5. It is for this reason that the contention advanced by the petitioners that the object of the Karnataka Act and that of the MV Act, 1988 is the same and that both of them occupy the same field, cannot be accepted. A comparison of the provisions of the MV Act, 1939 (Old Act) and MV Act, 1988 (New Act) further shows that the latter has merely replaced the former. All that it has done is to update, simplify and rationalize the law on the subject. For this purpose it has made important provisions in the following matters, namely:

"(a) rationalisation of certain definitions with additions of certain new definitions of new types of vehicles;

(b) Stricter procedures relating to grant of driving li- cences and the period of validity thereof;

(c) laying down of standards for the components and parts of motor vehicles;

(d) standards for anti-pollution control devices;

(e) provision for issuing fitness certificates or vehicles also by the authorised testing stations;

(f) enabling provision for updating the system of registra- tion marks;

(g) liberalised schemes for grant of stage carriage permits on non-nationalised routes, all India Tourist permits and also national permits for goods carriages;

(h), (i), (j), (k), (l) .....

6. The special provisions relating to the State Trans- port Undertakings which are contained in Chapter VI of the new Act are pari materia with those of Chapter IV-A of the old Act, with only this difference that whereas under the old Act it was the State Transport Undertaking which had to prepare a scheme for running and operating the transport service by it in relation to any area or route or portion thereof exclusively, under the new Act such a scheme has to be prepared by the State Government itself. There is no difference in the legal consequences of the schemes under the two enactments. Both envisage the operation of the services by the State Transport Undertaking to the exclusion of the rest, and cancellation of the existing permits and compensation only for the deprivation of the balance of the period of the permit. No acquisition of the vehicles or the paraphernalia connected with such vehicles is envisaged as is the case under the Karnataka Act.

It is also not correct to say that the new Act, i.e. MV Act 1988 incorporates a special policy of liberalisation for private sector operations in the transport field. We see no such provision in the Act nor was any pointed out to us. The provisions with regard to the grant of permits under both the old and the new Act are the same. In any case there is no provision for liberalisation of the grant of contract carriage permits in favour of the private individuals or institutions so as to come in conflict with the Karnataka Act.

7. Thus the Karnataka Act and the MV Act, 1988 deal with two different subject matters. As stated earlier the Karna- taka Act is enacted by the State Legislature for acquisition of contract carriages under entry 42 of the Concurrent list read with Article 31 of the Constitution to give effect to the provisions of Articles 39(b) and (c) thereof. The MV Act 1988 on the other hand is enacted by the Parliament under entry 35 of the Concurrent list to regulate the operation of the motor vehicles. The objects and the subject matters of the two enactments are materially different. Hence the provisions of Article 254 do not come into play in the present case and hence there is no question of repugnancy between the two legislations.

8. Shri Nariman, the learned counsel for the petitioners however, contended that the provisions of Section 14 and 20 of the Karnataka Act were in direct conflict with the provi- sions of Sections 74 and 80(2) of the MV Act 1988. According to him while the Regional Transport Authority (RTA) is enjoined by the provisions of Section 74 read with Section 80(2) of the MV Act 1988, ordinarily not to refuse to grant an application for permit of any kind, the provisions of Section 14 and 20 of the Karnataka Act prohibit any person from applying for, and any officer or authority from enter- taining or granting, application for running any contract carriage in the State. Thus there is a direct conflict between the two legislations, and since the MV Act 1988 is a later legislation, operating in the same area, it should be deemed to have impliedly repealed the provisions of Section 14 and 20 of the Karnataka Act, even if the latter Act had received the assent of the President. This is so because of the proviso to sub-clause (2) of Article 254 of the Consti- tution.

This contention proceeds on the footing that the two legislations occupy the same field. As has been pointed out earlier, the objects of the two legislations are materially different. The provisions of Sections 51 and 57 of the old Act further correspond to provisions of Sections 74 and 80 of the new Act. The Karnataka Act had received the assent of the President inspite of the provisions of Sections 51 and 57 of the old Act. The assent of the President, further as stated by the respondents, was taken by way of abundant precaution, although the subject matters of the two Acts were different. The provisions of Sections 14 and 20 of the Karnataka Act were incidental and necessary to carry out the main object of the said Act. Without the said provisions, the object of the said Act would have been frustrated. In the case of State of Karnataka & Anr. Etc. v..Ranganatha Reddy & Anr. Etc., (supra) while repelling the contention that there was a legislation encroachment by the Karnataka Act because it impinged on the subject of Inter- State Trade & Commerce in the Union List as it provided also for acquisition of transport carriages running on inter- state routes, this Court in para 32 of the Judgment has observed as follows:

" ..... It (the Karnataka Act) is not an Act which deals with any Inter-State Trade and Commerce. Even assuming for the sake of argument that carriage of passengers from one state to the other is in one sense a part of the InterState Trade and Commerce, the impugned Act is not one which seeks to legislate in regard to the said topic. Primarily and almost wholly it is an Act to provide for the acquisition of contract carriages, the Intra-State permits and the other properties situated in the State of Karnataka. In pith and substance it is an Act of that kind. The incidental en- croachment on the topic of inter-state trade and commerce, even assuming there is some, cannot invalidate the Act. The MV Act 1939 was enacted under Entry 20 of List III of Sched- ule Seven of the Government of India Act 1935 corresponding to Entry 35 of List III of the Seventh Schedule to the Constitution. The

subject being in the Concurrent List and the Act having received the assent of the President, even the repugnancy, if any between the Act and the Motor Vehi- cles Act stands cured and cannot be a ground to invalidate the Act. Entry 42 of List 111 deals with acquisition of property. The State has enacted the Act mainly under this entry ..... "

(emphasis supplied) According to me these observations should put an end to any controversy on the subject, namely, whether the two Legislations are enacted under two different entries in the Concurrent List, and whether they occupy different areas or not.

I am also unable to appreciate the contention that the provisions of Sections 14 and 20 of the Karnataka Act are in conflict with the provisions of Sections 74 and 80 of the New MV Act 1988. Section 98 of the MV Act 1988 in terms clearly states (as did Section 68B of the MV Act 1939) that Chapter VI relating to the special provi- sions about the State Transport Undertaking and the rules and orders made thereunder, shall have effect notwithstand- ing anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Sections 74 and 80 relating to the grant of the contract carriage permit and the procedure in applying for the grant of such permits respectively, are in Chapter V. This means that when under Chapter VI, a scheme is prepared by the State Govt. entrusting the contract carriage services in relation to any area or route or portion thereof, to a State Transport Undertaking to the exclusion--complete or partial of other persons, the provisions of Sections 74 and 80 would have no application, and the private transport operators cannot apply for the grant of contract carriage permits under Section 80 nor can such permits be granted by the Transport Authority. In other words, the MV Act 1988 also makes a provision for nationalisation of routes, and envisages a denial of permits to private operators when routes are so nationalised. Hence it is not correct to say that there is a conflict between the provisions of the two Acts.

9. It was then contended that when there is a repugnancy between the legislations under Article 254 of the Constitu- tion, the doctrine of pith and substance does not apply, and even if some of the provisions of the impugned State legis- lation are in conflict with some of the provisions of the Central legislation, the conflicting provisions of the State legislation will be invalid. In support of this contention, reliance was placed on two decisions one of the Federal Court in the case of Meghraj & Ors. v. Allahrakhiya & Ors., 29 AIR 1942 FC 27 and the other of the Privy Council report- ed in AIR 34 1947 PC 722 confirming the former. The Federal Court in the above decision has observed that when a provincial Act is objected to as contravening not Section 100 but Section 107(1) the Govt. of India Act 1935 (corresponding to Article 254(1) of the Constitution) the question of the pith and substance of the impugned Act does not arise. In that case, the validity of the Punjab Restitution of Mortgage Lands Act was challenged on the ground that some of its provisions were repugnant to certain provisions of the Contract Act and of the Civil Procedure Code. The Court held that there was no repugnancy between the legislations. But while holding so, the Court made a one sentence observation as follows: "In the judgment of the High Court there is some discussion of the question of the "pith and substance" of the Act; but that question does not arise as objection is taken not under Section 100 of the Constitution act but Sec. 107." There is no discussion on the point. The arguments, if any advanced on the question are neither reproduced nor dealt with. The observation further was not necessary for the decision in that case, since as is pointed out above, the Court had

held that there was no repugnancy between the two statutes since they cov- ered two different subject matters. Hence the issue as to whether the impugned Punjab Restitution of Mortgage Lands Act was valid because the pith and substance of the Act covered an area different from the one covered by the Con- tract Act and the Civil Procedure Code, did not fall for consideration before the Court. What is more, when the matter went in appeal before the Privy Council, the said point was not even remotely referred to and I find no obser- vation in the judgment either confirming, or dissenting from the said observations. This being the case the said observa- tions cannot be regarded as more than general in nature. They are not even an obiter-dicta much less are they the ratio decidendi of the case Hence the said observations do not have a binding effect.

Even otherwise, I am of the view that not to apply the theory of pith and substance when the repugnancy between the two statutes is to be considered under Article 254 of the Constitution, would be illogical when the same doctrine is applied while considering whether there is an encroachment by the Union or the State legislature or a subject exclu- sively reserved for the other. When the legislative en- croachment is under consideration the doctrine of pith and substance comes to the aid to validate a legislation which would otherwise be invalid for the very want of legislative competence. When the repugnancy between the two legislations is under consideration, what is in issue is whether the provision of the State enactment though otherwise constitu- tionally valid, has lost its validity because the Parliament has made a legislation with a conflicting provision on allegedly the same matter. If it is open to resolve the conflict between two entries in different Lists, viz. the Union and the State List by examining the dominant purpose and therefore the pith and substance of the two legisla- tions, there is no reason why the repugnancy between the provisions of the two legislations under different entries in the same List, viz. the Concurrent List should not be resolved by scrutinizing the same by the same touchstone. What is to be ascertained in each case is whether the legis- lations are on the same subject matter or not. In both cases the cause of conflict is the apparent identity of the sub- ject matter. The tests for resolving it therefore cannot be different.

10. I may in this Connection refer to some of the au- thorities relied upon by the parties. In Municipal Council Palai v.T.J. Joseph & Ors., [1964] 2 SCR 87 this Court had to consider the repugnancy between the presolution passed by the appellant Municipal Council in exercise of the powers vested in it under Section 286 and 287 of the Travancore District Municipalities Act 1941, and the provisions of Section 42 of the Travancore-Cochin Motor Vehicles Act 1950 which came into force on January 5, 1950, providing for the use of a public bus stand constructed for Stage Carriage buses starting from and returning to the Municipal limits or passing through its limits.

The respondent operators challenged the resolution of the Council by contending that the provisions of Sections 286 and 287 of the Municipalities Act stood repealed by implication by virtue of the provisions of Section 42 of Travancore-Cochin Motor Vehicles Act, 1950. That Section read as follows:

"Government or any authority authorised in this behalf by Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places

at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. ' ' The High Court accepted the contention of the respondents and allowed the Writ Petition. In appeal against the said decision, this Court discussed the law relating to the repugnancy between two legislations by referring to various decided cases foreign as well as Indian. The Court pointed out that in Daw v. The Metropolitan Board of Works, [1862] 142 ER 1104 after stating the general principles of con- struction, the Court there had said that when the legislation was found dealing with the same subject matter in two Acts, so far as the later statute derogates from and is inconsistent with the earlier one, the legislature must be held to have intended to deal in the later statute with the same subject matter which was within the ambit of the earli- er one. This Court further observed that in that case the English Court was concerned with the statutes which covered more or less the same subject matter and had the same object to serve. That decision further had kept open the question whether the powers conferred upon one authority by an earli- er Act, could continue to be exercised by that authority after the enactment of a provision in a subsequent law which conferred wide powers on another authority which would include some of the powers conferred by the earlier statute till the new authority chose to exercise the powers con- ferred upon it. Referring to the case of The Great Central Gas Consumers Co. v. Clarke, [1863] 143 ER 331 the Court observed that the foundation of that decision was that the later statute was a general one whereas the previous one was a special one and, therefore, the special statute had to give way to the later general statute.

Referring to the case of Goodwin v. Phillips, [1908] 7 CLR 16 the Court observed that the doctrine of implied repeal was well recognised, and that repeal by implication was a convenient form of legislation and that by using this device, the legislature must be presumed to intend to achieve a consistent body of law. The Court then went on to say that it is undoubtedly true that the legislature can exercise the powers of repeal by implication, but it is an equally well-settled principle of law that there is a pre- sumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, the failure to acid a repealing clause indicates that the intent was not to repeal existing legislation. This presumption is rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together. Then the Court referred to the following observations from page 631, para 311 of Crawford on Statutory Construction: "There must be what is often called 'such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal ..... for the intent of the legislature to repeal the old enactment is utterly lacking."

The Court then referred to the observations made in Crosby v. Patch, 18 Calif. 438 quoted by Crawford "Statutory Con- struction" p. 633 to point out the reasons of the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy. The said observations are as follows:

"As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same sub- ject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the

repugnancy between the two is irreconcilable. Bowen v. Lease, 5 Hill 226. 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. 'The reason and philosophy of the rule', says the author, 'is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or teating the subject in a general manner, and not expressly contradicting the orginal act, shall not be con- sidered as intended to affect the more particular or posi- tive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."

The Court then pointed out that for implying a repeal the next thing to be considered is whether the two statutes relate to the same subject matter and have the same purpose. The Court in this connection quoted the following passage at page 634 from Crawford:

"And, as we have already suggested, it is essential that the new statute covers the entire subject matter of the old; otherwise there is no indication of the intent of the legis- lature to abrogate the old law. Consequently, the later enactment will be construed as a continuation of the old one."

(emphasis supplied) These observations are very material for considering the question with which we are concerned in the present case, namely whether the doctrine of pith and substance is ap- plicable while examining the repugnancy of the two statutes. The Court then stated that the third question to be considered was whether the new statute purports to replace the old one in its entirety or only partially, and the Court observed that where replacement of an earlier statute is partial, a question like the one, which the Court did not choose to answer in Daw's case (supra) would arise for decision. The Court also stated that it has to be remembered that at the basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provi-

sions on the statute book and, therefore, when the court applies this doctrine, it does no more than give effect to the intention of the legislature ascertained by it in the usual way, i.e., by examining the scope and the object of the two enactments, the earlier and the later. The Court then referred to its earlier decision in Deep Chand v. State of U.P. & Ors., [1959] 2 SCR 8 and pointed out that in that case the following principles were laid down to ascertain whether there is repugnancy or not:

1. Whether there is direct conflict between the two provi- sions;

2. Whether the legislature intended to lay down an exhaus- tive code in respect of the subject matter replacing the earlier law;

3. Whether the two laws occupy the same field. The Court then referred to Sutherland on Statutory Construc- tion (Vol. 13rd Edn. p. 486) on the question of "repeal of special and local statutes by general statutes". The para- graph reads as follows:

"The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to

a particular phase of the subject covered by the general law, or to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject-matter by the general enactment. Therefore, where the later general statute does not propose an irreconcilable conflict, the prior special statute will be construed as remaining in effect as a quali- fication of or exception to the general law." The Court, however, hastened to add that there is no rule of law to prevent repeal of special and local statute by a later general statute and therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment. However, the Court observed that where it is doubtful whether the special statute was intended to be repealed by the general statute, the Court should try to give effect to both the enactments as far as possible, since the general statute applies to a11 persons and localities within its jurisdiction and scope as distinguished from the special one which in its operation is confined to a particular locality. Where the repealing effect of a statute is doubtful, the statute is to be strictly construed to effectuate its consistent operation with previous legislation as observed by Sutherland on Statutory Construction. The Court also approved of the observations of Suleman J., in Shyamakant Lal v. Rambhajan Singh, [1939] FCR 193 that repugnancy must exist in fact, and not depend merely on a possibility. After discussing the principles of repugnancy as above, the Court answered the question that fell for consideration before it in favour of the Municipal Council by observing as follows: "It seems to us however, clear that bearing in mind the fact that the provisions of s. 72 of the Travancore Cochin Motor Vehicles Act were intended to apply to a much wider area than those of ss. 286 and 287 of the Travancore District Municipalities Act it cannot be said that s. 72 was intended to replace those provisions of the Travancore Distt. Municipalities Act. The proper way of construing the two sets of provisions would be to regard s. 72 of the Travancore-Cochin Motor Vehicles Act as a provision inconti- nuity with ss. 286 and 287 of the Travancore District Munic- ipalities Act so that it could be availed of by the appro- priate authority as and when it chose. In other words the intention of the legislature appears to be to allow the two sets of provisions to co-exist because both are enabling ones. Where such is the position, we cannot imply repeal. The result of this undoubtedly would be that a provision which is added subsequently, that is, which represents the latest will of the legislature will have an overriding effect on the earlier provision in the sense that despite the' fact that some action has been taken by the Municipal Council by resorting to the earlier provision the appropri- ate authority may nevertheless take action under s. 72 of the Travancore Cochin Motor Vehicles Act, the result of which would be to override the action taken by the Municipal Council under s. 287 of the District Municipalities Act. No action under section 72 has so far been taken by the Govern- ment and, therefore, the resolutions of the Municipal Coun- cil still hold good. Upon this view it is not necessary to consider certain other points raised by learned counsel."

It would thus appear from this decision that the Court held there that the allegedly conflicting provisions of Travancore Cochin Motor Vehicles Act were intended to apply to much wider area than the relevant provisions of the Distt. Municipalities Act and, therefore, it could not be said that the provisions of the Motor Vehicles Act were intended to replace the provisions of Municipalities Act. The Court also held that the proper way of construing the two sets of provisions would be to regard the conflicting provisions of the Motor Vehicles Act as provisions in conti- nuity with the relevant

provisions of the Municipalities Act so that it could be availed of by the appropriate authority as and when it chose. The Court, therefore, read into the relevant provisions, the intention of the legislature to allow the two sets of provisions to co-exist because both were enabling ones, and in such circumstances no repeal could be implied. The Court also rested the said decision by relying on the fact that since no action was taken by the Government under the relevant provisions of the Motor Vehi- cles Act, till such time as the action was taken under the said provisions, the Municipal Council could act under the provisions of the Municipalities Act.

What is important from our point of view, is the view taken in that case that when repugnancy is alleged between the two statutes, it is necessary to examine whether the two laws occupy the same field, whether the new or the later statute covers the entire subject matter of the old, whether legislature intended to lay down an exhaustive code in respect of the subject matter covered by the earlier law so as to replace it in its entirety and whether the earlier special statute can be construed as remaining in effect as a qualification of or exception to the later general law, since the new statute is enacted knowing fully well the existence of the earlier law and yet it has not repealed it expressly. The decision further lays down that for examining whether the two statutes cover the same subject matter, what is necessary to examine is the scope and the object of the two enactments, and that has to be done by ascertaining the intention in the usual way and what is meant by the usual way is nothing more or less than the ascertainment of the dominant object of the two legislations.

In Ratan Lal Adukia v. Union of India, [1989] 3 SCR 537 the conflict was between the provisions of Section 80 of the Railways Act 1890 as amended by the Railways (Amendment) Act 1961 on the one hand and the provisions of Section 20 of the Code of Civil Procedure, 1908 and section 18 of the Presi- dency Small Causes Courts Act 1882, on the other. Section 80 of the Railways Act before its amendment had provided that a suit for compensation for loss of life or injury to a passenger or for loss, destruction and deterio- ration of animals or goods, would lie where the passengers or the animals or goods were booked through over the Rail- ways of two or more Railway Administrations, against the Railway Administration from which the passengers and the goods were booked or against the Railway Administration on whose railway the loss injury, destruction or deterioration occurred. By the amendment of 1961, the aforesaid provisions of Section 80 were changed and such a suit was made main- tainable--(a) if the passenger 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 they were booked through over the railway of two or more Railway Administrations, against the Railway Administration from which they were booked or against the Railway Administration on whose railway the destination station lay or the loss etc. occurred. It was further pro- vided that in either of these two cases the suit may be instituted in a court having jurisdiction over the place at which the passenger or the goods were booked or the place of destination or over the place in which the destination station lies or the loss etc. occurred. Thus the changes brought about by the amendment were significant. The old section did not deal with the liability of claims in respect of goods etc. carried by single railway. It only concerned itself with them when they were carried by more than one railway and provided that the suit for loss of such goods could he brought against either the Railway Administration with which the booking was made or against the Railway Administration of the delivery station. The old section further did not speak 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 section 18 of the Presi- dency Small Causes Courts, as the case may be. The amendment of the section however, made a departure in this respect, namely, it also named the place where such suits could be instituted and it is with this change the decision in ques- tion was concerned. Confirming the High Court's view, the Court held that the new Section 80 prevailed over the provi- sions of Section 20 of the Code of Civil Procedure and of Section 18 of the Presidency Small Causes Courts Act. The Court took the view that in view of the fact that the provi- sions of the new Section 80 as well as the relevant provi- sions of the Code of Civil Procedure and the Presidency Small Causes Courts Act dealt with the same subject matter, namely, the forum for suits, and since the new Section 80 was a special provision relating to special suits against the Railway Administration the special provisions would prevail over the general provisions. The Court also stated that Section 80, looking into its earlier history and the other changes which were brought in it, was a code in itself dealing with the relevant subject matter, and therefore, it repealed the provisions of Section 20 of the Code of Civil Procedure and of Section 18 of the Presidency Small Causes Courts Act by necessary implication. The Court also held that since the provisions of the latter two gener- al statutes related to territorial jurisdiction of courts and since the amendment to Section 80 also dealt with the same subject, but in case of only suits for compensation against the Railway, Section 80 being the special statute should be deemed to have supplanted the general statutes like the Code of Civil Procedure and general provisions of section 20 of the Code and Section 18 of the Presidency of Small Causes Courts Act.

It will thus be apparent that in that case the provi- sions which were in conflict related to the same subject matter unlike in our case. The provisions with regard to application and grant of permits in Sections 14 and 20 have nothing in common with the provisions of Sections 74 and 80 of the Motor Vehicles Act 1988. The former provisions are ancillary to giving effect to the acquisition and nationali- sation of the road transport within local territorial lim- its. The later provisions are general in nature and in furtherence of the object of the Act which is to regulate transport. The subject matters of both the statutes and the object of the two sets of provisions are, therefore, materi- ally different. In our case both the statutes can stand together. The legislative intent is clear. Since, further, the Parliament had enacted the later statute knowing fully well the existence of the earlier statute and yet it did not expressly repeal it, it will be presumed that the Parliament felt that there was no need to repeal the said statute. In Ch. Tika Ramji & Ors. etc. v. State of U.P. & Ors., [1956] SCR 393 what fell for consideration was the alleged repugnancy between the U.P. Sugarcane (Regulation of Supply and Purchase) Act 1953 and two Notifications issued by the State Government under it on September 27, 1954 and November 9, 1955 on the one hand, and Industries (Development & Regulation) Act 1951 and the Essential Commodities Act 1955 and the Sugar Cane Control Order 1955 issued under it on the other. The Court has stated there that no question of repug- nancy under Article 254 of the Constitution can arise where Parliamentary legislation and State legislation occupy different fields and deal with separate and distinct matters even though of a cognate and allied nature, and whereas in that case there was no inconsistency in the actual terms of the Act enacted by Parliament and the State Legislature, the test of repugnancy would be whether Parliamentary and the State Legislature in legislating under an Entry in the Concurrent List exercised their powers over the same subject matter or whether the laws enacted by Parliament were intended to be exhaustive so as to cover the entire field.

The Court then referred to three tests of inconsistency or repugnancy listed by Nicholas on p. 303 2nd Edn. of his Australian Constitution, namely, (1) there may be inconsist- ency in the actual terms of the competing statutes, (2) though there may be no direct conflict, a State law may be inoperative because the Common Wealth Law, or the Award of Common Wealth Court is intended to be a complete exhaustive code, (3) even in the absence of intention, the conflict may arise when both State and Common Wealth Law seek to exercise their powers over the same subject matter. The Court also quoted with approval, observations of the Calcutta High Court in G.P. Stewart v.B.K. Roy Choudhary, AIR 1939 Cal. 628 on the subject which are as follows:

"It is sometimes said 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 is no true repugnancy according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say, "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified". "The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Issacs, J.in the Australian 44 hours case (37 CLR 466) 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". The Court also approved the observations of Sulaiman, J. in Shyamakant Lal v. Rarnbhajan Singh, (supra) on the subject which are as follows:

"When the question is whether a Provincial legisla- tion is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repug- nant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility. Their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force: (Attorney-General for Ontario v. Attorney-General for the Dominion, [1896] AC 348).

11. Referring to the case in hand; the Court then stated that there was no question of any inconsistency in the actual terms of the two Acts. The only questions that arose there were whether the Parliament and the State Legislature sought to exercise their powers over the same subject matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code, or in other words, expressly or impliedly evinced an intention to cover the whole field. The Court then compared the provisions of Industries (Devel- opment and Regulation) Act, 1951 as amended

by Act XXVI of 1953, the Essential Commodities Act X of 1955 and the Sugar Control order 1955 issued thereunder with the U.P. Act and Order of 1954 issued by the State Government thereunder. By comparing the impugned State Act with the Central Act of 1951 as amended by the Act, 1953, the Court held that the Central Act related to sugar as a finished product while the State legislation covered the field of sugar cane. Thus the fields of operation of the two legislations were different and hence there was no repugnancy between the Central Act and the State Act. It was also further pointed out there that even assuming that sugar cane was an article or class of articles relatable to the sugar industry within the meaning of Section 18(g) of the Central Act, no order was issued by the Central Government in exer- cise of the powers vested in it under that Section, and hence no question of repugnancy could ever arise because repugnancy must exist in fact and not depend merely on a possibility. The possibility of an Order under Section 18(g) being issued by the Central Government would not be enough. The existence of such an Order would be the essential pre-requisite before any repugnancy could ever arise.

12. As far as the Essential Commodities Act, 1955 was concerned, the Court pointed out that the Parliament was well within its powers in legislating in regard to sugar cane, and the Central Government was also well within its powers in issuing the Sugar Cane Control Order, 1955 because all that was in exercise of the concurrent powers of legis- lation under Entry 33 of List 111. That, however, did not affect the legislative competence of the U.P. State Legisla- ture to enact the law in regard to sugar cane and the only question which had to be considered was whether there was any repugnancy between the provisions of the Essential Commodities Act and the State legislation in that behalf. The Court then pointed out that the State Government did not at all provide for the fixation of minimum price for sugar cane. Neither had it provided for the regulation of movement of sugar cane as was done by the Central Government in Clauses (3) and (4) of the Sugar Cane Control Order 1955. Likewise, the provision contained in Section 17 of the State Act in regard to the payment of sugar cane price (as fixed by the Central Govt.) and the recovery thereof as if it was an arrear of land revenue, did not find its place in the Central Government Sugar Cane Control Order 1955. The provi- sions in the two legislations were, therefore, mutually exclusive and did not impinge upon each other. By referring to the provisions of Central Government Sugar Cane Control Order 1955 and the U.P. Govt. Sugar Cane (Regulation and Purchase) Order 1954 issued under the respective statutes, the Court pointed out that none of those provisions also overlapped. The Centre was silent with regard to some of the provisions which had been enacted by the State and the State was silent with regard to some of the provisions which had been enacted by the Centre. There was no repugnancy whatever between those provisions, and neither the State Act nor the rules flamed thereunder as well as the State Government's Order issued under it, trenched upon the field covered by the Essential Commodities Act. The Court therefore held that since there was no repugnancy between the two, the provi- sions of Article 254(2) of the Constitution did not come into play. The Court then considered whether the repealing Section 16 of the Essential Commodi- ties Act and clause 7 of the Sugar Cane Control Order 1955 had repealed the State Act to the extent mentioned therein. Section 16(1)(b) provides as follows:

"16(1) The following laws are hereby repealed--

(a) x x x x

(b) any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of, and trade and commerce in, any essential commodity".

The contention was that the expression "any other law" covered the impugned State Act which was in force in the State immediately before the commencement of the Essential Commodities Act in so far as it controlled or authorised the control of production, supply and distribution of and trade and commerce in sugar cane (which was), an essential commod- ity under the Central Act and Clause (7) of the Sugar Cane Control Order. The contention advanced on behalf of the U.P. State was that under the proviso to Article 254(2), the power to repeal a law passed by the State Legislature was incidental to enacting a law relating to the same matter as is dealt with in the State legislation and that a statute which merely repeals a law passed by the State Legislature without enacting substantive provisions on the subject would not be within the proviso, as it could not have been the intention of the Constitution that on a topic within the concurrent sphere of the legislation, there should be a vaccum. The Court observed that there was considerable force in the said contention and there was much to be said for the view that a repeal simpliciter was not within the scope of the proviso. The Court however, stated that it was not necessary to give its decision on the said point as the petitioner in that case would fail on another ground. The Court then observed that while the proviso to Article 254(2) does confer on Parliament a power to repeal a law passed by the State Legislature, that power is, under the terms of the proviso, subject to certain limitations. It is limited to enacting a law with respect to the same matter adding to, amending, varying or repealing a "law so made by the State Legislature". The law referred to here is the law mentioned in the body of Article 254(2). It is a law made by the State Legislature with reference to a matter in the Concurrent List containing provisions repugnant to an earlier law made by Parliament and with the consent of the President. It is only such a law that could be altered, amended or repealed under the proviso. The impugned Act was not a law relating to any matter, which is the subject of an earlier legislation by Parliament. It was a substantive law covering a field not occupied by Parliament, and no question of its containing any provisions inconsistent with a law enacted by Parliament could therefore arise. To such a law, the proviso had no application and Section 16(1)(b) of Act X of 1955 and clause 7(1) of the Sugar Cane Control Order 1955 must, in this view, be held to be invalid. (Sic).

13. The aforesaid review of the authorities makes it clear that whenever repugnancy between the State and Central Legislation is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter. The test for determining the same is the usual one, namely, to find out the dominant intention of the two legislations. If the dominant intention, i.e. the pith and substance of the two legislations is different, they cover different subject matters. If the subject matters covered by the legislations are thus different, then merely because the two legislations refer to some allied or cognate subjects they do not cover the same field. The legislation, to be on the same subject matter must further cover the entire field covered by the other. A provision in one legis- lation to give effect to its dominant purpose may inciden- tally be on the same subject as covered by the provision of the other legislation. But such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intend- ed to be covered by Article 254(2). Both the legislations must be substantially on the same subject to attract the Article.

14. In this view of the matter I am of the view that there is no repugnancy in the provisions of Sections 14 and 20 of the Karnataka Act and Sections 74 and 80 of the MV Act 1988. The petitions must therefore fail and are hereby dismissed with costs.

ORDER

15. In view of the decision of the majority the Writ Petitions stand dismissed and the rule in each is discharged with costs.

K. RAMASWAMY, J. 1. Despite my deep respect to my learned brother, I express my inability to persuade myself to agree with the result proposed in the draft judgments of my brothers.

The notoriety of open and uninhibited misuse of contract carriage as stage carriages in picking up and setting down the passengers en route the route for hire or reward sabo- taging the economic, efficient and co-ordinated transport service by the respective State Transport Undertakings (for short, "the S.T.U.") had been taken cognizance of by the Karnataka State Legislature. It provided the remedy making the Karnataka Contract Carriages (Acquisition) Act (21 of 1976), for short, "the Acquisition Act" by taking aid of the Entry 42, List III (Concurrent List) of the Seventh Schedule to the Constitution and Articles 31, 39(b) and (c) of the Constitution. It was reserved for consideration and has received the assent of the President on March 11, 1976. It came into force with effect from March 12, 1976. Section 3(g) of the Acquisition Act defines "Contract Carriage" as one covered under s. 2(4) of the Motor Vehicles Act (4 of 1939), for short, "the Repealed Act" including public serv- ice vehicle defined under s. 63(6), etc. s. 3(a) defines "acquired property"--means the vehicles and other immovable and movable property vesting in the State Government under s. 4 thereof. The Acquisition Act excluded tourist vehicles, motor cabs, etc. Section 4 declares that on and from the notified date, every contract carriage along with permit or certificate of registration or both, lands, buildings, workshop, etc. shall stand vested in the State Government free from encumbrances. Section 6 provides machinery to determine the amount for the vesting of the acquired proper- ty under s. 4. Section 14 which is relevant for the purpose of this case read thus:

"Fresh permit or renewal of the existing permit barred- Except as otherwise provided in this Act--

(1) No person shall on or after the commencement of this Act apply for any permit or fresh permit or for renewal of an existing permit for the running of any contract carriage in the State; and (2) every application for the grant of a permit or fresh permit or for the renewal of the existing permit and all appeals or revisions arising therefrom relating thereto made or preferred before the commencement of this Act and pending in any Court or with any Officer, Authority or Tribunal constituted under the Motor Vehicles Act shall abate." A reading thereof manifests its unequivocal declaration that on and from the date of vesting viz., March 12, 1976, the statute prohibits any person to apply for, any fresh permit or renewal of an existing permit to run any contract carriage in that State and all applications, appeals or revisions pending before the appropriate authority as on the notified date, statutorily declared to have been abated. Section 20 declares by employing non-obstenti clause in sub-s. (1) that notwithstanding anything in the repealed Act with effect from March 12, 1976 all contract carriage permits granted or renewed in respect of any vehicle other than a vehicle acquired

under the Acquisition Act, or belonging to the S.T.U., Karnataka; or referred to in s. 24 thereof shall stand canceled. Sub-s. (2) accords with mandatory language that the S.T.U. "shall be entitled for or renewal of con- tract carriage permits to the exclusion of all other per- sons" and sub-s. (3) prohibits by employing a negative language that "no officer or authority shall invite any application or entertain any such application of persons other than the Corporation (S.T.U.) for grant of permit or the running of the contract carriage." By conjoint operation of ss. 14 and 20, the right of any person other than S.T.U., Karnataka to apply for and to obtain any permit or renewal of an existing permit to run a motor vehicle as a contract carriage has been frozen and issued statutory injunction restraining the authority concerned from either inviting or entertaining any application from him for the grant or renewal of contract carriage permit. Monopoly to obtain permit or renewal to run contract carriage was conferred on S.T.U., Karnataka. The constitutional validity of the Acqui- sition Act was upheld by this Court in State of Karnataka v. Ranganatha Reddy, [1978] 1 SCR 64 1. The contention that the Acquisition Act fails under Entry 42 of List I of Seventh Schedule to the Constitution, viz., inter-state trade and commerce and that therefore the State Legislature lacked competence to make the Acquisition Act was negatived. It was held that in pith and substance, it is an act of acquisition of the contract carriages falling in Entry 42 of List III. It was further held that the effect of operation of ss. 14 and 20 is incidental or ancillary to the acquisition. Having received the assent of the President, it is saved by Art. 254(2) of the Constitution. When an attempt to obtain renew- al or fresh special permits to run contract carriages taking aid of s. 62(1) or s. 63(6) respectively of the repealed Act 4 of 1939 was made on the ground that the Acquisition Act had saved their operation, this Court in Secretary, R.T.A., Bangalore v. P.D. Sharma, AIR 1989 SC 509 held that by operation of ss. 14 and 20(3), a public service vehicle be it a contract carriage or stage carriage for which temporary permits under ss. 62(1) and 63(6) were issued and were in force on January 30, 1976 are not entitled to fresh permits and exclusive monopoly to run contract carriages was given to S.T.U., Karnataka.

2. The Motor Vehicles Act, 1988 (Act 59 of 1988), for short, "the Act", came into force with effect from July 1, 1989. Section 2(7) defines 'contract carriage'. Section 2(8) defines 'motor vehicle' or 'vehicle' to mean any mechanical- ly propelled vehicle adapted for use upon road whether the power of propulsion is transmitted thereto from an external or internal source and includes a chasis to which a body has not been attached and a trailer ..... Section 2(34) de- fines 'public place' to mean, a road, street, way or other place whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage car- riage. Section 2(35) defines 'public service vehicle' to mean, any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a ..... , contract carriage and stage carriage. Section 2(47) defines 'transport vehicle' to mean, a public service vehicle ..... , or a private service vehicle. Chapter V deals with Control of Transport Vehicles, s. 66 mandates an owner of a motor vehicle to obtain permit to run it in accordance with the conditions of a permit thus: "(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passen- gers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used."

(Emphasis supplied) (The provisos are not necessary for the purpose of this case. Hence omitted) Section 73 requires him to make an application for permit of a contract carriage with particulars specified therein. Section 74 deals with grant of contract carriage permit. Sub-s. (1) thereof provides that "subject to provisions of sub-s. (3), a Regional Transport Authority may, on an appli- cation made to it under s. 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit, provided that no such permit shall be granted in respect of any area not specified in the application." Sub- s. (2) empowers the Regional Transport Authority to impose any one or more conditions enumerated therein to be attached to the permit, the details thereof are redundant. Sub-s. (3) empowers a State Government, when directed by the Central Government, to limit the number of contract carriages generally or a speci- fied type as may be fixed in the notification published in this behalf for their operation on the city routes. The details are also not necessary for the purpose of this case. Under s. 80(1), an application for a permit of any kind may be made at any time. Sub-s. (2) posits that "a Regional Transport Authority shah not ordinarily refuse to grant an application for permit of any kind made at any time under this Act." (Emphasis Supplied). The proviso are omitted as not being relevant. The petitioners have applied under ss. 73, 74 and 80 of the Act for grant of contract carriage permits. Placing reliance on ss. 14 and 20 of the Acquisi- tion Act, the concerned authorities have refused to enter- tain their applications. Calling them in question the above writ petitions have been filed under Art. 32 of the Consti- tution.

3. The contention of Sri Nariman, learned senior counsel for the petitioners, is that the object of the Act is to liberalise grant of contract carriages which do not ply on any particular routes. Contract carriage defined under s. 2(7) of the Act is a public service vehicle within the meaning of s. 2(35) of the Act. Section 66 obligates the owner to obtain permits to run contract carriages. Section 14(1) read with s. 80(1) accords the right to the petition- ers to apply for, and enjoins the authorities under s. 80(2) to consider and to grant permits to run public service vehicles as contract carriages. Section 217(1) repealed all the laws, save such of the laws which are not inconsistent with the provisions of the Act. The operation of ss. 14 and 20 of the Acquisition Act is inconsistent with ss. 74 and 80 of the Act. Grant of permit to run contract carriage is covered by Entry 35 of List III of the Seventh Schedule. Though, the Acquisition Act was made under Entry 42 of List III and has received the assent of the President, by opera- tion of s. 74 read with s. 80 and s. 2 17, the operation of ss. 14 and 20 became void under proviso to Art. 254(2). Sections 14 and 20 also stood repealed by implication. The authorities are, hereby, enjoined to consider the petition- ers' applications for grant of contract carriage permits as per the provisions of the Act and the relevant rules. Mr. Sanghi, learned senior counsel for the S.T.U., Karnataka, contended that the Acquisition Act was made in exercise of the power under Entry 42 of List III of Seventh Schedule to the Constitution. Its constitutional validity was upheld by this Court. It does not occupy the same field as under the Act. The Acquisition Act, having been reserved for consider- ation under Art. 254(2) and has received the assent of the President, it prevails over the Act in the State of Karnata- ka. The Acquisition Act is a "special law" in juxtaposition to the general law under the Act. The argument of Mr. Sanghi, though apparently at first blush is alluring and attractive, but on a deeper probe, I find insurmountable difficulties in his way to give accept- ance to them. The main questions are whether ss. 14 and 20 of the Acquisition Act and ss. 73, 74 and 80 of the Act is "in respect of the same matter" and whether the Act evinces its intention to occupy the same field.

4. At the cost of repetition, it may be stated that ss. 49 to 51 and the relevant rules under the Repealed Act govern the grant of contract carriage permits and in partic- ular the rigour imposed in s. 50 thereof is absent in the Act. The Acquisition Act aimed to acquire the contract carriages. They stood vested in the State Government under s. 4. Incidental and ancillary thereto, the operation of the existing permits or seeking renewal thereof and the pendency of the proceedings in that regard either by way of an appli- cation or in appeal or in revision, having statutorily been declared under s. 14(2) to have been abated, the right to obtain permits or special permits afresh or renewal thereof to run contract carriages or stage carriages after expiry of the term, has been frozen to all citizens. Exclusive monopo- ly to obtain permits or of the renewal to run them has been given to the S.T.U., Karnataka. On and from March 12, 1976, s. 20(3) prohibits the authorities concerned to invite or entertain an application or to grant or renew the permits to a contract carriage or special permit, except to the S.T.U., Karnataka. The non-obstenti clause makes clear any cloud of doubts of the applicability of the repealed Act 4 of 1939. After the receipt of the assent of the President, though it is inconsistent with the Repealed Act, its operation is saved by Art. 254(2) of the Constitution. Sections 73 and 74 read with s. 80 of the Act gives to an applicant the right to apply for and to obtain, and obligates the Regional Transport Authority to grant permit to run any public serv- ice vehicle as contract carriage throughout the country including the State of Karnataka. Though, s. 80(1) gives discretionary power to grant permit but sub-s. (2) of s. 80 manifests that refusal to grant contract carriage permits appears to be an exception for stated grounds and obviously for reasons to be recorded.

4A. Constitutionalism is the alter to test on its anvil the constitutionality of a statute and Art. 254 is the sole fountain source concerning a State law in the Concurrent List. Article 254(1) deals with inconsistency of law made by Parliament and the law made by the Legislature of a State. Clause (1) adumbrates that the existing law, if it is repug- nant with the law made by the Parliament, subject to the provisions of cl. (2), the law made by the Parliament wheth- er passed before or after the law made by the Legislature of such state, or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of repug- nancy, be void. Clause (2) deals with the law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing one "with respect to that matter", then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the Presi- dent and has received his assent, prevails in that State; provided that nothing in this clause shall prevent Parlia- ment from enacting "at any time any law with respect to the same matter' ', including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

(Emphasis supplied)

5. In a federal system like ours, there are two streams of law, viz., Union and State. At times, the citizen sub- jected to both of laws Central and State will find incon- sistency between the obligations imposed on him by those laws or finds variance to avail both laws. In fact, both the Union and State Legislatures are competent to make laws on a subject enumerated in the Concurrent List. We are not con- cerned in this case with regard to Union List or State List. it is quite possible that while legislating upon the sub- ject, they might end up in handing down inconsistent law and the

observance of one law may result is non-observance of the other. The citizen will, in such a situation, be at a loss to decide which of the two laws he should follow. To resolve the inconsistency, in other words, to bring about operational uniformity Constitution presses into Service Art. 254. Its forerunner is s. 107 of the Government of India Act, 1935. Both the Parliament and a State Legislature derive their power only under Art. 254 and Art. 246(2) to legislate concurrently on the subjects enumerated in the Concurrent List. The enumeration of the subjects in the Concurrent List is only for demarcation of legislative heads or distribution of the subject/subjects over which the Parliament and the State Legislature have competence to make law. However, paramouncy has been accorded to the Union Law, making provision in Art. 254 firstly as to what would happen in case of repugnancy between the Central and the State law in the concurrent field and secondly resolving such a con- flict. The reason is that there are certain matters which cannot be allocated exclusively either to the Parliament or to a State Legislature and for which, though often it is desirable that the State Legislature should make a provision in that regard. Local conditions necessarily vary from State to State and the State Legislature ought to have the power to adopt general legislation to meet the particular circum- stances of a State. It is equally necessary that the Parliament should also have plenary jurisdiction to enable it in some cases to secure uniformity in the main principles of law throughout the country or in other matters to guide and encourage the States' efforts and to provide remedies for mischiefs arising in the State sphere extending or liable to extent beyond the boundaries of a single State. The subjects like the Indian Penal Code, Civil Procedure Code, Criminal Procedure Code, Labour Laws, the Motor Vehi- cles Act, etc. occupy this area. The essential condition for the application of Art. 254(1) is that the existing law or a law made by the Parliament subsequent to State law, must be with respect to one of the matters enumerated in the Concur- rent List. In other words, unless it is shown that the repugnancy is between the provisions of a State law and an existing or subsequent law or amended law etc. of the Par- liament in respect of the same specified matter, Art. 254 would be inapplicable,

6. The Court has to examine in each case whether both the legislations or the relevant provisions therein occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnance between the two laws. The emphasis laid by Art. 254 is "with respect to that matter". Clause (1) of Art. 254 posits as a rule that in case of repugnancy or inconsistency between the State law and the Union law relating to the same matter in the Concurrent List occupying the same field, the Union law shall prevail and the State law will fail to the extent of the repugnancy or inconsistency whether the Union law is prior or later in point of time to the State law. To this general rule, an exception has been engrafted in cl. (2) thereof, viz., provided the State law is reserved for con- sideration of the President and it has received his assent, and then it will prevail in that State notwithstanding its repugnancy or inconsistency with the Union law. This excep- tion again is to be read subject to the proviso to cl. (2) thereof, which empowers the Parliament to make law afresh or repeal or amend, modify or vary the repugnant State law which will become void even though it received President's assent. In short, cl. (1) lays down a general rule; cl. (2) is an exception to cl. (1) and proviso qualifies that excep- tion. The premise is that the law made by the Parliament is paramount and Union and State law must relate to the same subject matter in the Concurrent List. It is, thus, made clear that the Parliament can always, whether prior or subsequent to State law, make a law occupied by the State law. An absurd or an incongruous or irreconcilable result would emerge if two inconsistent laws or particular provi- sions in a statute,

each of equal validity, could coexist and operate in the same territory.

7. Repugnancy between the two pieces of legislation, generally speaking, means that conflicting results are produced when both laws are applied to the same set of facts. Repugnancy arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and that it is impossible to obey without disobeying the other. Repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. The Court should, therefore, make every attempt to reconcile the provisions of the apparently conflicting enactments, and would give harmoneous construc- tion. There is no repugnancy unless the two Acts or provi- sions are wholly incompatible with each other or the two would lead to absurd result. The purpose of determining the inconsistency is to ascertain the intention of the Parlia- ment which would be gathered from a consideration of the entire field occupied by the State Legislature. The proper test is whether the effect can be given to the provisions of both the laws or whether both the laws can stand together. There is no repugnaney if these two enactments relate to different fields or different aspects operating in the same subject. In my considered views, Art. 254 was engrafted in the Constitution by the rounding fathers to obviate such an absurd situation. The reason is obvious that there is no provision in the Constitution that the law made by the Parliament is to be void by reason of its inconsistency with the law made by the Legislature of a State. It may be dif- ferent if the State law is only to supplement the law made by the Parliament. If both the laws without trenching upon another's field or colliding with each other harmoneously operate, the question of repugnancy does not arise. It is also axiomatic that if no law made by Parliament occupies the field, the State Legislature is always free to make law on any subject/subjects in the Concurrent List III of the Seventh Schedule of the Constitution.

8. It is seen that the Acquisition Act was made in exercise of the power under Entry 42 of the Concurrent List and ss. 14 and 20 thereof are integral part of the Acquisi- tion Act. Undoubtedly, they are consequential or ancillary to s. 4 thereof. It had received the assent of the Presi- dent. But after the Act was brought on statute, the question emerges whether there exists no repugnancy between ss. 14(1) and 20(3) of the Acquisition Act in juxtaposition to ss. 66(1), 73, 74 and 80 of the Act. Before embarking upon an enquiry into the results produced by these provisions in the light of above discussion, let us consider the relevant decisions and the ratio laid down therein in this context.

Occupied Field:

1n Tika Ramji v. State of U.P., [1956] SCR 393. Bhag- wati, J. speaking for the Constitution Bench, applied three tests propounded by Nicholas in his Australian Constitution, Second Edition, page 303, to find the inconsistency or repugnancy thus. (1) There may be inconsistency in the actual terms of competing statutes; (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete and` exhaustive Code; and (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their power over the same subject matter. (Emphasis sup- plied). The repugnancy between the two statutes should exist in fact and not depend merely on a possibility. In that case, the question was whether the U.P. Sugarcane (Regula- tion of

Supply and Purchase) Act (Act 24 of 1953) is ultra vires of the U.P. Legislature in view of Art. 246 read with Entry 52 of List I and Item 33 of List III of Seventh Sched- ule to the Constitution. In that context, it was held that if both the Central Legislature and the Provincial Legisla- tures were entitled to legislature in regard to this subject of production, supply and distribution of sugarcane, there would arise no question of legislative competence of the Provincial Legislature in the matter of having enacted the impugned Act. Repugnancy falls to be considered when the law made by the Parliament and the law made by the Legislature occupy the same field, because if both these pieces of legislation deal with separate and distinct matters, though of a cognate and allied character, repugnancy does not arise. (Emphasis supplied) So far as our Constitution is concerned, repugnancy is dealt with in Art. 254. On a com- parison of various provisions of the State and Central laws, it was held that there was no question of any inconsistency in the actual terms of the Act enacted by the Parliament and the impugned Act and they did not occupy the same field. In A.S. Krishna v. Madras State, [1957] SCR 399, the question was whether s. 4(2) of the Madras Prohibition Act which lays down a presumptive evidence is repugnant to the Central legislation, viz., Criminal Procedure Code. Dealing with s. 107 of the Government of India Act, 1935 which is in pari material to Art. 254 read with Schedule VII, List II, Items 2 and 31 and List III, Items 2 and 5 of Schedule VII to the Constitution, Venkatarama Ayyar, J. speaking for the Constitution Bench, held that for applying s. 107 of the Government of India Act 1935, two conditions must be ful- filled--the provisions of the provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List; and they must be repugnant to each other. It is only when both these requirements are satisfied that the provi- sional law will to the extent of repugnancy becomes void. Section 4(2) of the Prohibition Act was held to be void. In Prem Nath Kaul v. State of J & K, [1959] 2 Supp. SCR 273, another Constitution Bench held that the essential condition for application of Art. 254(1) is that the exist- ing law must be with respect to one of the matters enumerat- ed in the Concurrent List; in other words, unless it is shown that the repugnancy is between the provisions of a subsequent law and those of an existing law in respect of the specified matters, the Article would be inapplicable. In Bar Council of U.P.v. State of U.P., [1973] 2 SCR 1073 the question arose was whether the State Government is empowered to impose stamp duty on the certificate of enrollment under s. 22 of the Advocates Act. In considering schedule VII, List I, Entries 77, 78 and 96; List II, Entry 63 and List III, Entries 44 and 26 and the relevant provisions of the Stamp Act and its Schedules, this Court held that the ques- tion of repugnancy can only arise in respect of matters where both the parliament and the State Legislature have competence to pass laws. In other words, when the Legisla- tive power is located in the Concurrent List, the question of repugnancy arises. In Deep Chand v. State of U.P., [1959] Supp. 2 SCR 8 relied on by Sri Nariman, the Uttar Pradesh legislature made U.P. Transport Service (Development) Act, which had received the assent of the President, introduced a scheme of nationalisation of the transport service. Subse- quently, Parliament has amended Act IV of 1939 through Amendment Act 100 of 1956. By reason thereof, it was con- tended that the U.P. Amendment Act became void by reason of Art. 254 of the Constitution. The matter was examined by the Constitution Bench of this Court. Subba Rao, J. (as he then was) per majority, while considering the question, laid three propositions to determine the repugnancy thus: (1) Whether there is direct repugnancy between the two provi- sions; (2) Whether Parliament intended to lay down an ex- haustive code in respect of the subject matter replacing the Act of the State Legislature; and (3) Whether the law made by the Parliament and the law made by the State Legislature occupy the same field. After examining in detail the provi- sions of the

respective Acts, it was held that after the Central Amendment Act 100 of 1956, it prevailed over the U.P. Act and prospectively became void as the Central Amend- ment Act occupied the same field in respect of the same schemes initiated under the U.P. Amendment Act and to that extent the State Act must yield its place to the Central Act.

In State of Orissa v.M.A. Tulloch & Co., [1964] 4 SCR 461 another Constitution Bench of this Court held that the inconsistency may be demonstrated not by a detailed compari- son of provisions of the two statutes but by the mere exist- ence of the two pieces of legislation. Meeting the argument as to on which Entry in the list the subject falls, it was held thus:

"If by reason of the declaration by Parliament the entire subject matter of 'conversation and development of minerals' has been taken over for being dealt with by Parliament, thus depriving the State of the power which it therefore pos- sessed, it would follow that the 'matter' in the State List is, to the extent of the declaration, (substracted from the scope of the declaration) and ambit of Entry 23 of the State List. There would, therefore after the Central Act 67 of 1957, be no matter in the List to which the fee could be related in order to render it valid."

It was accordingly held that the Orissa Mining Areas Devel- opment Fund Act (27 of' 1952) to be void. Of course, this was in considering the question under Article 246, Entry 54 of List I, and Entry 23 of List 11.

In State of Assam v. Horizon Union, [1967] 1 SCR 484 the facts are that under the Industrial Disputes Act 1947, Section 7-A(3)(a) provided that the appropriate Government may by notification constitute an Industrial Tribunal con- sisting of one person to be appointed by the appropriate Government. The person shall not be qualified for appoint- ment as presiding officer of the Tribunal unless he is or has been a Judge of a High Court or he has held the office of Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appel- late Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years. Assam Act 8 of 1962 made an amendment to the above procedure and had received the assent of the President, introducing clause (aa) to sub-section (3)(a) of Section 7-A thus:

"He has worked as a District Judge or as an Additional District Judge or as both for a total period of not less than three years or is qualified for appointment as a Judge of a High Court; provided that the appointment to a Tribunal of any person qualified under this clause shall not be made without consultation with the Assam High Court."

In 1964, the Parliament made an amendment viz. Industri- al Disputes (Amendment) Act (36 of 1964) amending Section 7-A(3)(a) stating that "he has, for a period of not less than three years, been a District Judge or an Additional District Judge." The contention raised was that the Assam Act became void by reason of the subsequent Amendment Act of 1964. Both the Parliament and the State Legislature have exercised their power under the Concurrent List of VII Schedule. Another Constitution Bench of this Court has held that the Central Amendment Act 36 of 1964 intended to be an exhaustive code in respect of the subject matter and occu- pies the same field. Therefore, the Assam Act 8 of 1962 was repugnant to the Central Amendment Act 36 of 1964 as it does not require

the consultation with the High Court for the appointment of an Industrial Tribunal. Accordingly, it was held to be void.

In State ofJ & K v.M.S. Farooqi, [1972] 3 SCR 881 the facts were that the respondent was a member of the Indian Police Service governed by the All India Services Act, 1951 and the All India Services (Discipline and Appeal) Rules, 1955. They provided an exhaustive procedure to enquire into the misconduct by a member of the All India Services. The State Legislature, exercising the concurrent power, made Jammu and Kashmir Government Servants' Prevention of Corrup- tion (Commission) Act, 1962. The validity thereof was ques- tioned on the anvil of Article 254 of the Constitution. Dealing with the subject, another Constitution Bench, speak- ing through Sikri, C.J. held that the Commission Act empow- ers to conduct on enquiry into the charges of corruption and misconduct against all Government Servants including the members of All India Services. In addition to the recommen- dation for imposition of punishment engrafted in sub-section (2) of Section 17 of the Commission Act, it also disquali- fies for any public office to a specified period and also recommendation for prosecution for an offence in a Court of law. These details were not dealt with under the Central Act and the Rules. From this conspectus, this Court further held thus:

"It seems to us that in so far as the Commission Act deals with the infliction of disciplinary punishments it is repug- nant to Discipline and Appeal Rules. Parliament has occupied the field and given clear indication that this was the only manner in which any disciplinary action should be taken against the members of the All India Services Accordingly it was held that the State Act must be read down so as to leave the members of the All India Services outside its purview. Thereby, by implication it was held that by operation of Article 254 of the Constitution the Commission Act is repugnant to the All India Services Act and Rules. In Kerala State Electricity Board v. Indian Aluminium Co., [1976] 1 SCR 552 another Constitution Bench of this Court held that:

"Having discussed the question of the legislative field it might be necessary to discuss the question as to what hap- pens if it should be held that the matter under considera- tion in these cases falls within the concurrent list, that is, Entry 38 in List III as contended in the alternative by some of the respondents. As already mentioned the question will arise only if it should be held that the Kerala State Act falls under Entry 38 as contended by Mr. B. Sen. If the impugned legislation falls under List III then the question of repugnancy of that legislation with the existing law or the law made by Parliament as the case may be, will have to be considered."

In Basu's Commentary on the Constitution of India (Silver Jubilee Edition), Volume K, at page 144, it is stated that "the repugnancy to be found is the repugnancy in the actual provisions of two laws and not the subject matter of the two laws. The proper test is whether effect can be given to the provisions of both the laws or whether both the laws can stand together." (Emphasis added). It is trite law that the form of the provision does not conclude the matter. It must be the "same matter" under consideration. Operational Incompatibility:

9. Repugnancy could also be angulated from the perspec- tive of operational incompatibility as well. The celebrated decision in Clyde Engineering Co. v. Cowburn, [1926] 37 CLR 466 popularly known as 44-hour case, is a leading authority on this topic. The facts therein are that a Commonwealth

Arbitration award fixed rates of pay and overtime on the basis of 48-hour working week while Forthfour Hours Week Act 1925 (NSW) S. 6 purported to deal with the same matter on the basis of 44-hours working week. The respondent employee claimed the State Act rate of pay but was denied on the basis of 48-hours working week. When questioned, it was argued that there was no inconsistency between the award and the State Act because the employer, it was said, could obey both laws by observing the 44-hours working week but on the basis that the pay scale determined by the award applied to the 44-hours work- ing week. The High Court of Australia relying on s. 109 of Australian Constitution rejected the argument and found that an inconsistency existed, as the State law operated to vary the adjustment of industrial relations established by the Commonwealth award. Knox, C.J. held that two enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. Statute may do more than impose duties; they may for instance confer rights; and one statute is inconsistent with another when it takes away a right conferred by the other even though the right may be one which might be waived or abandoned without disobeying the statute which conferred it. Issacc, J. in his separate but concurrent judgment held:

"The vital question would be: was the second Act in its true construction intended to cover the whole ground, and there- fore, to supersede the first? If it was intended, then the inconsistency would consist in giving operative effect at all to the first Act; because the second was intended en- tirely to exclude it. The suggested test however useful a working guide it may be in some cases prove a test; cannot be recognised as the standard measuring rod of inconsisten- cy. If, however, a competent legislature expressly or im- pliedly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another legisla- ture assumes to enter to any extent upon the same field .....

If such a position as I have postulated be in fact estab- lished the inconsistency is demonstrated not by comparison of detailed provisions but by the existence of the two sets of provisions; where that wholesale inconsistency does not occur but the field in partly open, then it is necessary to enquire further and possibly to examine and contrast partic- ular provisions. If one enactment makes or acts upon as lawful that which the other makes unlawful or if one enact- ment makes unlawful that which the other makes or acts upon as lawful, the two or to that extent inconsistent. It is plain that it may be quite possible to obey both simply by not doing what is declared by either to be unlawful and yet there is palpably inconsistency. The basic reason is that the Constitution clearly intended that once the Commonwealth settled an interstate dispute, that settlement shall stand and that its terms should be framed by the one hand, the other being necessarily excluded. Forty-four hours shall constitute a week's work. No day's work to exceed either hours without payment for overtime, etc."

Higgins, J. has held that:

"When is a law inconsistent with another law? Etimologically I presume that things are inconsistent when they cannot stand together at the same time and law is inconsistent with another when the command or power or provision in one law conflicts directly with the command, power or other provi- sion of another. Where two legislations operate over the same territory and came into collision, it is necessary that one should prevail, but the necessity is confined to actual collision as

one legislature says 'do' and the other says 'do not'.

(Emphasis supplied) In that case it was held that there is operational incompat- ibility between the Commonwealth award and the State law. The State law was held to be void.

In Hume v. Palmer, [1926] 38 CLR 441 both New South Wales Act and Commonwealth Act authorised making of the Regulations dealing with collisions at sea. In both cases regulations had been made. They were in identical terms except that in relation to the jurisdiction to convict for breaches. The New South Wales regulations prescribed summary prosecution and a maximum penalty of Pound 50 whereas the Commonwealth regulations prescribed summary prosecution on indictment and a maximum penalty Pound 100. It was held that the same facts produced different legal results under the two Acts, the penalty under State law was held displaced. In R.v. Brisbane Licensing Court, [1920] 28 CLR 23 a section of the Commonwealth Electoral Act provided that on a polling day fixed for a federal election, a referandum or vote of the electors of a State or part thereof, should not be taken. A local option poll had been taken on such a day under Queensland legislation. It was held that a direct inconsistency existed, and that the local option poll was, therefore, declared to be invalid. In Colvin v. Bradley Bros. Pvt. Ltd., [1943] 68 CLR 151 an order made pursuant to a section of New South Wales Factories and Shops Act prohibiting the employment of women on a milling machine. An award had been made by the Commonwealth Arbitration Court under the Conciliation and Arbitration Act which permitted the employment of females on work, which included work on a milling machine, unless the work was declared to be unsuitable for women by a Board of Reference. No such declaration had been made by the Board. it was held that the order was inconsistent with the award by virtue of s. 109 in that it directly prohibited something which the Commonwealth award permitted.

In In Re Ex Parte Maclean, [1930] 43 CLR 472 at 483. Dixon J. held:

"When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and pre- scribe what the rule of conduct should be, they make laws which are inconsistent notwithstanding that the rule of conduct is identical, which each prescribes, and s. 109 applies."

It was further held that the Federal statute had evinced an intention to cover the subject matter and provide what the law upon it should be.

In Wenn v. Attorney General (Victoria), [1948] 77 CLR 84 the Re-establishment and Employment Act dealt with the obligations of employers' to give preference to ex-service- men in employment (but included no provision as to the duty to give preference in promotion to ex-servicemen already employed). The State Act dealt not only with the same mat- ter, but also included a provision requiring employers to give preference in promotion. It was held that Commonwealth Legislation was an exhaustive code allowing no room for the operation of the State legislation relating to matter not covered by the Commonwealth Act. The Victorian Law giving preference in promotion was, therefore, held to have been displaced.

In O'Sullivan v. Noarlunga Meat Co. Ltd., [1954] 92 CLR 565 the facts are that the South Australian Act prohibited laughter of stock for export without a State licence while the Commonwealth Act prohibited export of meat from stock which had not been slaughtered on premises registered under the regulations thereof. In an evenly divided Court, the opinion of the Chief Justice had prevailed, it was held that the Commonwealth regulations were detailed enough to show that they covered the whole field of 'slaughter for export' and, therefore, the State licensing requirement did not apply. On further appeal the Judicial Committee in O. Sullivan v. Noarlunga Meat Co. Ltd., [1957] AC 1 at 28 added that "in applying this principle it is important to bear in mind that the relevant field or subject is that covered by the law said to be invalid."

In Australian Federal Constitutional Law by Collin Howard, Second Edition (1972). at page 27, it was stated that where both a Commonwealth Law and a State law are in terms applicable to a given set of facts, and they produce conflicting legal results on those facts, the Commonwealth law applies and not the State law. In Blackley v. Devondale Cream (Vie.) Pvt. Ltd., [1968] 117 CLR 253, a State wages determination prescribed a minimum rate of pay for certain work which was also covered by a Commonwealth award. The Commonwealth award prescribed a lower minimum rate. It was held that there was a direct inconsistence because on the same facts the two laws produced different entitlements. The award rate, therefore, prevailed over the State's determina- tion.

10. REPEAL BY IMPLICATION:

Sub-s. (1) of s. 217 of the Act repeals thus:

"The Motor Vehicles Act, 1939, and any law corresponding to that Act in force in any State immediately before the com- mencement of this Act (hereafter in this section referred to as the repeal enactments) are hereby repealed." (The other sub-sections are not relevant. Hence omitted.) (Emphasis supplied) Thereby s.217(1) does not expressly repeal sections 14(1) and 20(3) of the Acquisition Act. In Zaveribhai v. State of Bombay, [1955] 1 SCR 799 relied on by Sri Nariman, the facts were that s. 7 of the Essential Supplies (Temporary Powers) Act, 1949 provides penalty for contravention of orders issued under s. 3 for a term of three years or with fine or with both. The Bombay Legislature amended the Act, by Act 52 of 1950. Section 2 of the Amendment Act provides that '- notwithstanding anything contained in Essential Supplies (Temporary Powers) Act, 1946, whoever contravenes an order made under Sec. 3 of the Essential Supplies (Temporary Powers) Act, shall be punishable with imprisonment for a term which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to fine". Thus, the Bombay Act imposes minimum sentence while indicating maximum sentence and obtained the assent of the President. Later, the Central Act was amended in 1948, 1949 and 1950. In 1950 Act, Sec. 7 categorised three groups of offences covering the same field and imposd graded sentences depending on the character of the offence and the nature of the commodity contravened. The Bombay Act was challenged on the ground that it was repugnant and was repealed by implication. Venkatarama Iyer, J. speaking for the Constitution Bench held that repugnancy might result when both the legislations cover the same field. It was further held:

"The important thing to consider with reference to this provision is whether the legislation in 'in respect of the same matter.' If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Art. 254(2) will have no application. The principle embodied in s. 107(2) and Art. 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

It was further held that though there is no express repeal, even then the State law will be void under the proviso if it conflicts with later law with respect to the same matter that may be enacted by the Parliament. The principle on which the rule of implied repeal rests, namely, that if the subject matter of 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 Art. 254(2) where the further legislation by Parliament is in respect of the same matter as that of the State law. Accordingly, it was held that Sec. 2 of the Bombay Act, No. 36 of 1947 cannot prevail as against Sec. 7 of the Essential Supplies (Temporary Powers) Act as amended by Act 52 of 1950.

The doctrine of repugnancy and implied repeal was again considered by this Court in M. Karunanidhi v. Union of India, [1979] 3 SCR 254 where the Tamil Nadu Public Men (Criminal Misconduct) Act (2 of 1974) was assailed to be repugnant to the Indian Penal Code and the Prevention of Corruption Act 1947. In considering that question, Fazal Ali, J. speaking for the Constitution Bench held:

"... So far as the Concurrent List is concerned, both Par- liament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Art. 254(1). Where the provisions of the Central Act and a State Act in the Concurrent List are fully inconsistent and are absolute- ly irreconciliable, the Central Act will prevail and the State Act will become void in view of the repugnancy. Where, however, a law passed by the State comes into colli- sion with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with CI. (2) of Art. 254.

Where a law passed by the State Legislature the entries in the State List entrenches upon any of the entries in the Central List the consitutionality of the law may be upheld by invoking the doctrine on a subject covered by the Concur- rent List is inconsistent with and repugnant to a previous law made by the Parliament, then such a law can be protected by obtaining the assent of the President under Art. 254(2) of the Construction. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amend- ing, varying or repealing the law made by the State Legisla- ture under the proviso to Article 254."

Dealing with the question of repeal by implication, it was held that there is no repeal by implication unless the inconsistency appears on the face of the two statutes that where two statutes occupy a

particular field but there is a room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results and that where there is no inconsistency, a statute occupying the same field seeks to create distinct and separate offence, no question of repugnancy arises and both the statutes continue to operate in the same field. On a comparison of the relevant provisions of the ,impugned Act and the Central Acts, it was not repealed by implication.

In T. Barai v. Henry Ah Hoe, [1983] 1 SCR 905 relied on by. Sri Nariman, the facts are that for an offence under Sec. 16(1)(a) read with Sec. 7 of the Prevention of Food Adulteration Act, 1954, prescribed maximum punishment of six years. But the West Bengal Legislature amended the Central Act with effect from April 29, 1974 by the Prevention of Adulteration of Food, Drugs and Cosmatics (West Bengal) (Amendment) Act, 1973, providing punishment with imprison- ment for life and triable by a Court of Sessions. It had received the assent of the President. Later on the Parlia- ment amended the Section (Section 16(a) and also introduced Section 16-A in 1976 to the Prevention of Food Adulteration Act, 1954, imposing punishment of three years. Both the enactments have been made in exercise of the concurrent power. In considering the question whether the State Act became void, A.P. Sen J. speaking for three Judges' Bench has held thus:

"There is no doubt or difficulty as to the law applicable. Art. 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State Law with regard to the subjects enumerated in the Concurrent List. and secondly, for resolving such conflict, Art. 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State Law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall. to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of incon- sistency between the two, and no more. in short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will pre- vail in that State and override the provisions of the Cen- tral Act in their applicability to that State only. The predominance of the State law may, however, be taken away if Parliament legislate under the proviso to Clause (2). The proviso to Art. 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either direct- ly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subse- quent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repug- nancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g. where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed, In all such cases, the law made by Parliament shall prevail over the State law under Art.

254(1). That being so, when Parliament stepped in and enacted the Central Amendment Act, it being a latter law made by Parliament 'with respect to the same matter', the West Bengal Amendment Act stood impliedly repealed."

In M/s Hoeshst Pharmaceuticals Ltd. v. State of Bihar, [1983] 3 SCR 130 the Bihar Finance Act, 1981 was made in exercise of the power under Entry 54 of List II of Seventh Schedule to the Constitution amending and repealing the previous Act providing therein to levy tax on sale or purchase of goods. Section 5(1) imposes levy of surcharge on every dealer whose gross turnover during an year exceeds Rupees Five lakhs, in addition to the tax payable by him at such rate not exceeding 10 per cent of the total amount of tax. Sub-s. (3) of s. (5) prohibits such dealer from col- lecting the amount of surcharge from the purchasers. The Essential Commodities Act made under Entry 33 of the Concur- rent List III empowering the Government to fix prices of the essential commodities including drugs, medicines, etc. It was contended that by operation of sub-s. (1) of s. 5, the State Act is repugnant and is void. In considering that question, A.P. Sen, J. speaking for three Judges' Bench held that both the Union and the State Legislature have concur- rent powers of legislation with respect to any of the mat- ters enumerated in List 111, subject only to the proviso contained in el. (2) of Art. 254, i.e. provided the State Act do not conflict with those of any Central Act on the subject .... The question of repugnancy arises only when both legislatures are competent to legislature in the same field, i.e. when both Union and the State laws relate to a specified subject in List III and occupy the same field. Yet another place it was held that it is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy became void. Art. 254(1) has no application to the cases of repugnancy due to over- lapping found between List II on the one hand and Lists I and II on the other. If such overlapping exists in any particular case, State law will be ultra vires because of the non obstenti clause in Art. 246(1) read with opening words--"Subject to" Art. 246(3). In such cases, the State law will fail not because of repugnance in the Union List but due to want of legislative competence. Repugnancy arises where there is a direct conflict or collision between the Central Act and the State Legislation and to the extent of repugnancy by necessary implication or by express reference the State legislation stands repealed."

11. It is true, as tightly contended by Mr. Sanghi, that ss. 14 and 20 are consequential or ancillary to s. 4 of the Acquisition Act 21 of 1976 which had received the assent of the President. Its constitutionality was upheld by seven Judges' Bench of this Court, when the legislative competence was assailed on the anvil of Entry 42 of List I of the Seventh Schedule, but not on the touchstone of proviso to cl. (2) of Art. 254 which gives overriding power to the Parliament to make any law or amend, vary, modify or repeal the law made by a State Legislature. Ranganatha Reddy's ratio, thereby, does not stand an impediment to go into the validity of ss. 14 and 20 of the Acquisition Act.

12. The result of the above discussion leads to the following conclusions:

(a) The doctrine of repugnancy or inconsistency under Art. 254 of the Constitution would arise only when the Act or provision/ provisions in an Act made by the Parliament and by a State Legislature on the same matter must relate to the Concurrent List III of Seventh Schedule to the Constitution; must occupy the same field and must be repugnant to each other;

(b) In considering repugnance under Art. 254 the question of legislative competence of a State Legislature does not arise since the Parliament and the Legislature of a State have undoubted power and jurisdiction to make law on a subject, i.e. in respect of that matter. In other words, same matter enumerated in the Concurrent List has occupied the field.

(c) If both the pieces of legislation deal with separate and dis-

tinct matters though of cognate and allied character repug- nancy does not arise.

(d) It matters little whether the Act/Provision or Provi- sions in an Act falls under one or other entry or entries in the Concurrent List. The substance of the "same matter occupying the same field by both the pieces of the legisla- tion is material" and not the form. The words "that matter" connotes identity of "the matter" and not their proximity. The circumstances or motive to make the Act/Provision or Provisions in both the pieces of legislation are irrelevant.

(e) The repugnancy to be found is the repugnancy of Act/ provision/Provisions of the two laws and not the predoninant object of the subject matter of the two laws.

(f) Repugnancy or inconsistency may arise in diverse ways, which are only illustrative and not exhaustive:

(i) There may be direct repugnancy between the two provi- sions;

(ii) Parliament may evince its intention to cover the whole same field by laying down an exhaustive code in respect thereof displacing the State Act, provision or provisions in that Act. The Act of the Parliament may be either earlier or subsequent to the State law;

(iii) Inconsistency may be demonstrated, not necessarily by a detailed comparison of the provisions of the two pieces of law but by their very existence in the statutes;

(iv) Occupying the same field; operational incompatibility; irreconcilability or actual collision in their operation in the same territory by the Act/provision or provisions of the Act made by the Parliament and their counter parts in a State law are some of the true tests;

(v) Intention of the Parliament to occupy the same field held by the State Legislature may not be expressly stated but may be implied which may be gethered by examination of the relevant provisions of the two pieces of the legislation occupying the same field;

(vi) If one Act/Provision/Provisions in an Act makes lawful that which the other declares unlawful the two to that extent are inconsistent or repugnant. The possibility of. obeying both the laws by waiving the beneficial part in either set of the provisions is no sure test;

(vii) If the Parliament makes law conferring right/obliga- tion/ privilege on a citizen/person and enjoins the authori- ties to obey the law but if the State law denies the self same rights or privileges

negates the obligation or freezes them and injuncts the authorities to invite or entertain an application and to grant the right/privilege conferred by the Union law subject to the condition imposed therein the two provisions run on a collision course and repugnancy between the two pieces of law arises thereby;

(viii) Parliament may also repeal the State law either expressly or by necessary implication but Courts would not always favour repeal by implication. Repeal by implication may be found when the State law is repugnant or inconsistent with the Union law in its scheme or operation etc. anti conflicting results would ensue when both the laws are applied to a given same set of facts or cannot stand togeth- er or one law says do and other law says do not do. In other words, the Central law declares an act or omission lawful while the State law says them unlawful or prescribes irrec- oncilable penalties/punishments of different kind, degree or variation in procedure etc. The inconsistency must appear on the face of the impugned statutes/provision/provisions therein;

(ix) If both the pieces of provisions occupying the same field do not deal with the same matter but distinct, though cognate or allied character, there is no repeal by implica- tion;

(x) The Court should endeavour to give effect to both the pieces of legislation as the Parliament and the legislature of a State are empowered by the Constitution to make laws on any subject or subjects enumerated in the Concurrent List III of Seventh Schedule to the Constitution. Only when it finds the incompatibility or irresconcilability of both Acts/provision or provisions, or the two laws cannot stand together, the Court is entitled to declare the State law to be void or repealed by implication; and

(xi) The assent of the President of India under Art. 254(2) given to a State law/provision, provisions therein accord only opera-

tional validity though repugnant to the Central law but by subsequent law made by the Parliament or amendment/modifica- tion, variation or repeal by an act of Parliament renders the State law void. The previous assent given by the Presi- dent does not blow life into a void law.

Scope and operation of Rule of Pith and Substance and pre- doninant purpose vis-a-vis Concurrent List.

13. The further question is whether the doctrines of dominant purpose and pith and substance would be applied to the matter covered under the Concurrent List. in my consid- ered view, they do not apply. The doctrine of pith and substance primarily concerns in determining the legislative competence. The idea underlying the detailed distribution of legislative powers in three Lists was to ensure that Parlia- ment and State Legislatures should keep themselves within the spheres allocated to them in List I and vice versa in List II respectively. However, legislation is a very compli- cated matter as it reflects life, which itself is a compli- cated one. Hence, it is sometimes inevitable that a law passed by the Parliament may trench upon the domain of the State Legislature and vice versa. Would such incidental encroachment on the territory of the other invalidates the legislation? In examining this question and finding a solu- tion, the Courts try to save the legislation from

unconsti- tutionality by applying the flexible rule of pith and sub- stance. It is not that the Courts encourage one legislature to encroach upon the legislative field of another legisla- ture but merely recognise the reality that despite the strict demarcation of legislative fields to respective legislatures, it is not always possible to effectuate a legislative purpose without incidental encroachment on another's field. In such a situation the Courts try to find out the pith and substance of the legislation. If the legis- lation is found in its pith and substance, within the legis- lative competence of the particular legislature, it is held to be valid, despite incidental encroachment on the legisla- tive power of another legislature. Thus, the rule of pith and substance is applied to determine whether the impugned legislation is within that competence under Arts. 246(1) and 246(3) of the Constitution, and to resolve the conflict of jurisdiction. If the Act in its pith and substance falls in one List it must be deemed not to fall in another List, despite incidental encroachment and its validity should be determined accordingly. The pith and substance rule, there- by, solves the problem of overlapping of "any two entries of two different List vis-a-vis the Act" on the basis of an inquiry into the "true nature and character" of the legisla- tion. The Court examines the legislation as a whole and tries to find whether the impugned law is substantially within the competence of the Legislature which enacted it, even if it incidentally trespasses into the legislative field of anoth- er Legislature. In a case where the question of validity of an act arises, it may be that the topic underlying the provisions of the Act may in one view of the matter falls within the power of the Centre, and on another view within the power of the States. When this happens, it is necessary to examine the pith and substance of the impugned legisla- tion; and to see whether in its pith and substance it fails within one, or the other of the Legislative Lists. As stated earlier the constitutionality of the Impugned Act is not determined by the degrees of invasion into the domain as- signed to the other legislature but its pith and substance and its true nature and character to find whether the matter fails within the domain of the enacting legislature. The incidental or ancillary encroachment into forbidden field does not effect the competence of the legislature to make the impugned law.

14. From this scenerio let us peep into few important decisions touching the subject. In Prafulla Kumar v. Bank of Commerce, Khulna, AIR 1947 PC 60 the question was whether the Bengal Moneylenders Act (10 of 1940) is ultra vires by reason of Schedule 7, List II, Items 28 and 38 of the Gov- ernment of India Act, 1935, and thereby is void. In consid- ering that question, the Judicial Committee held as culled out in Head note (b) thus:

"It is not possible to make a clean cut between the powers of the Federal and Provincial Legislatures. They are bound to overlap and where they do the question to be considered is what is the pith and substance of the impugned enactment and in what list is its true nature and character to be found. The extent of invasion by the Provinces into subjects in Federal List is an important matter not because the validity of a Provincial Act can be determined by discrimi- nating between degrees of invasion but for determining the pith and substance of the impugned Act. The question is not has it trespassed more or less but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not a Provincial matter but a Federal mat- ter. Once that is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true import.

No doubt where they come in conflict List I has priority over Lists III and II and List III has priority over List II but in each case one has to consider what the substance of an Act is and whatever its ancillary effect, attribute it to the appropriate list according to its true character" This leading ratio formed foundation in countless cases decided by this Court. In State of Bombay v.F.N. Balsara, [1951] SCR 682 it was held that:

"It is well settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field and, therefore, it is necessary to enquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it then it cannot be held to be invalid merely because it incidentally encroaches on matters which have been assigned to another Legislature."

In Atiabari Tea Co. Ltd. v. State of Assam, [1961] 1 SCR 809 Gajendragadkar, J. (as he then was) speaking per majority, has explained the purpose of the rule of pith and substance thus:

"The test of pith and substance is generally and more appro- priately applied when a dispute arises as to the legislative competence of the legislature, and it has to be resolved by reference to the entries to which the impugned legislation is relateable, when there is a conflict between the two entries in the legislative list, and legislation by refer- ence to one entry would be competent but not by reference to other, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question."

In Meghraj & Ors. v. Allaharakhiya & Ors., AIR 1942 FC 27 relied on by Sri Nariman, the contention raised was that when the matter in the Concurrent List had occupied the flied whether the question of pith and substance of the impugned Act would arise? The Federal Court held that when the Provincial Act is objected to as contravening not Sec. 100 but Sec. 107(1) of the Government of India Act 1935, which is in pari materia to Art. 254 of the Constitution, that the question of pith and substance of the impugned Act does not arise. In Tika Ramji's case, the same question had arisen for resolution. It was held that--

"The pith.and substance argument also cannot be imported here for the simple reason that when both the Centre as well as the State Legislatures were operating in the Concurrent field. there was no question of any trespass upon the exclu- sive jurisdiction vested in the Centre under Entry 52 of List I, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State legislature together, there was any repugnancy a contention which will be dealt with hereafter."

I have no hesitation to hold that the doctrine of pith and substance on the predoninant purpose, or true nature and character of the law have no application when the matter in question is covered by an entry or entries in the Concurrent List and has occupied the same field both in the Union and the State Law. It matters little as to in which entry or entries in the Concurrent List the subject-matter falls or in exercise whereof the Act/provision or provisions therein was made. The Parliament and Legislature of the State have exclusive power to legislate upon any subject or subjects in a Concurrent List. The question of incidental or ancillary encroachment or to trench into forbidder

field does not arise. The determination of its 'true nature and character' also is immaterial.

15. Power to legislate whether derived from the con- cerned Articles or legislative lists in Seventh Schedule

16. Parliament and the Legislature of any state derive their power from Art. 246(2) of the Constitution to make laws with respect to any of the matters enumerated in List III of the VIIth Schedule to the Constitution. With a non- obstanti clause engrafted therein namely notwithstanding anything in Clause ? the Parliament, and, subject to Clause 1, the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III. List III of Seventh Schedule enumerates the legislative heads over which the appropriate Legislature can operate. The function of the list is not to confer power on either the Parliament or a State Legislature. Article 254 of the Constitition removes the inconsistency between the law made by the Parliament and by the Legislatures of States. Thus the power to legislate on the Concurrent List is derived by the Parliament and the Legislature of any State from Article 246(2) read with Article 254 only. Paramouncy to the law made by the Parliament is given by Article 254(1) and provi- so to Article 254(2). The Parliament derives its exclusive power under Article 246(1) to legislate upon any of the subjects enumerated in List I of the Seventh Schedule in the Constitution. Similarly the Legislature of a State derives its exclusive power from Article 246(3) to make laws on any matters in List II. When the Parliament or the Legislature of a State while making legislation within its exclusive domain, namely, List I or List II respectively if it inci- dentally trenches upon the forbidden flied, namely, the field demarcated or distributed to the State Legislature and vice versa by the Legislature into List I the doctrine of Pith and Substance was applied to find the "true purpose and character of the Legislation". In considering the question of the doctrine of Pith and Substance in Subrahmanyam Chet- tiar v. Muttuswami Goundan, A.I.R. 1941 F.C. 47 at p. 51 held that it must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal inter- pretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee where- by the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with re- spect to matters in this list or in that. In that case the question was whether the Madras Agriculturists Relief Act 4 of 1938, Section 8 thereto is invalid, since the matter is in Schedule VII, List I or List II of the Government of India Act, 1935. The contention was that the negotiable instrument; promissory notes are covered by List I of the Seventh Schedule, therefore, the Act is invalid. In consid- ering that question and negativing the contention the above ratio was enunciated.

(emphasis supplied) In Governor General in Council v. The Reliegh Investment Co. Ltd., [1944] F.C.R. 229 at p. 261 in considering the ques- tion whether the Federal Legislature's power is not limited to cases specified in clauses (a) to (e) of sub-section (2) of Section 99 from Entry No. 23 of the List I of the Seventh Schedule; it was held by Spens, C.J. that it would not be right that the Legislature would derive the power to legis- late on this topic merely from the reference to it in the List, because the purpose of the Lists was not to create or confer powers, but only to distribute

between the Federal and the Provincial Legislatures, the powers which had been conferred by Section 99 and 100.

(emphasis added) In Harakchand Ratanchand Banthia v. Union of India, [1970] 1 SCR 479 at p. 489 the Constitution Bench speaking through Ramaswami, J. dealing with the Gold (Control) Act (45 of 1968) observed thus:

"Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appro- priate legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate legislatures can operate." (emphasis added) In Union of India v.H.S. Dhillion, [1972] 2 SCR 33 at p. 52 Sikri, C.J. speaking per majority of Seven Judges' Bench held that it must be remembered that the function of the lists is not to confer powers; they merely demarcate the legislative field. The Constitution Bench followed the ratio in Releigh Investment case, etc. (emphasis supplied)

16. Thus I hold that the Parliament and the legislature of a State derive their power to legislate on a subject/subjects in Lists I and List II of Seventh Schedule to the Constitution from Art. 246(1) and (3) respectively. Both derive their power from Art. 246(2) to legislate upon a matter in the Concurrent List III subject to Art. 254 of the Constitution. The respective lists merely demarcate the legislative field or legislative heads. The Parliament and the legislature of a State have concurrent power to legis- late upon any subject/subjects in the Concurrent list III of Seventh Schedule to the Constitution. Art. 254(1) and provi- so to Art. 254(2) give paramouncy to the law made by the Parliament, whether existing or made afresh or amended, modified, added or repealing the law subsequent in point of time to the state law made under Art. 254(2). The exercise of the power by a state legislature to make impugned law under one entry or other in the concurrent list is not decisive. The concerned entry or entries is not the source of power to make impugned law.

17. Keeping the principles laid hereinbefore at the back of our mind, let us consider the impugned provision. Section 14 read with s. 20 of the Acquisition Act (21 of 1976) freezed the right of a citizen to apply for an to obtain permit or special permit to run a contract car-

riage in terms of the permit and monopoly to run a contract carriage was conferred on the S.T.U., Karnataka. But the Act evinces its intention to liberalise the grant of contract carriage permit by saying in s. 80(2) that the Regional Transport Authority "shall not ordinarily refuse to grant the permit." It also confers the right on an applicant to apply for and authorises and Regional Transport Authority to grant liberally contract carriage permit except in the area covered by s. 80(3) and refusal appears to be an exception, that too, obviously for reasons to be recorded. It may be rejected if the permit applied for relate to an approved or notified route. The Act accords the right, while the Acqui- sition Act negates and freezes the self-same right to obtain a permit and to run a contract carriage and prohibits the authorities to invite or entertain an application and to grant a permit to run contract carriage. the Act and the relevant rules cover the entire field of making an applica- tion in the prescribed manner and directs the Regional Transport Authority to grant permit with

condition attached thereto to run contract carriages vide ss. 66(1), 73, 74 and 80 of the Act. Thus, the existence of two sets of provisions in the Act 59 of 1988 and Acquisition Act 21 of 1976 is sufficient to produce conflicting results in their operation in the same occupied field. The two sets of provisions run on collision course, though an applicant may waive to make an application for a permit. Thereby, there exists the operational incompatibility and irreconcilability of the two sets of provisions. Sections 14(1) and 20(3) of the Acquisi- tion Act are repugnant and inconsistent of ss. 73, 74 and 80 of the Act. By operation of proviso to Art. 254(2) of the Constitution, the embargo created by ss. 14(1) and 20(3) of the Acquisition Act (21 of 1976) to make or invite an appli- cation and injunction issued to Regional Transport Authority prohibiting to grant contract carriage permit to anyone except to S.T.U., Karnataka within the State of Karnataka became void.

18. For the applicability of the principle that special law prevails over the general law, the special law must be a valid law in operation. Voidity of law obliterates it from the statute from its very inception. In view of the finding that ss. 14(1) and 20(3) are void the contention that the special law prevails over the general law is without sub- stance. In Justiniano Augusto De Peidada Barreto v. Antonia Vicento De Fonseca & Ors., [1979] 3 SCR 494 s. 5(1) of the Goa, Daman and Diu (Administration) Act, 1962 declared that all laws in force immediately before December 20, 1961 in Goa, Daman and Diu or in part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. Pursuant to the powers conferred by Art. 240 of the Constitution, the Presi- dent pro-

mulgated Goa, Daman and Diu (Laws) Regulations from time to time. These regulations were extended with specified modifi- cation to Goa, Daman and Diu like Civil Procedure Code, 1908 and the Arbitration Act, 1940, but the Limitation Act, 1908 was not extended by any regulation made by the President. The Portuguese Civil Code inter alia provides limitation to lay suits which is different from the periods prescribed in Limitation Act 1963. It was contended that the Portuguese Civil Code is void by operation of Art. 254 of the Constitu- tion. While considering this question this Court at page 500 has stated thus:

"We are not here concerned with the provisions of cl. (2). For the purpose of the present appeals, we will assume that the Portuguese Civil Code which was continued by Par- liament to be in force in Goa, Daman and Diu was a law made by the State, though there may be several objections to so doing .... Without doubt the provisions of the Portuguese Civil Code, unless they are saved by s. 29(2) of the Limita- tion Act, are repugnant to the provisions of the Portuguese Civil Code are saved by s. 29(2) then there can be no ques- tion of any repugnancy. So the question whether the provi- sions of Portuguese Civil Code are void on the ground that they are repugnant to the provisions of the Limitation Act depends on the question whether the Portuguese Civil Code is saved by s. 29(2) of the Limitation Act, 1963." After exhaustive consideration of that question it was held by Chinnappa Reddy, J. speaking for a bench of two Judges that the provisions of the Portuguese Civil Code deal with the subject of limitation of suits etc. and in force in the Union Territory of Goa, Daman and Diu only is 'local law' within the meaning of s. 29(2) of the Limitation Act and they have to read into the Limitation Act 1963, as if the schedule to the Limitation Act is amended mutatis mutandis Thus, it is clear that the question of repugnancy in cl. (2)of'Art. 245 did not arise in that case. On the other hand, operation of Portuguese Civil Code was saved by s. 29(2) of the Limitation Act as a local law.

20. The doctrine of predominant purpose of Acquisition Act (21 of 1976) as discussed by my learned brothers is to achieve the objective of preventing the flagrant and blatant misuse or abuse of the contract carriages as stage carriages by eliminating that class of private pliers from all Karna- taka roads I am in complete agreement with it. It is a laudable object to subserve public purpose. But the opera- tion of its incidental or ancillary provisions, i.e. Arts. 14(1) and 20(3) to the primary or predominant purpose is nailed by the altered/situation, viz., making the law under the Act 59 of 1988. It is already held that Art. 254 applies only to repugnancy arising between an existing or subsequent Union law and State law on any one or more subjects in the Concur- rent List III of Seventh Schedule to the Constitution. The inconsistency arising between laws on the other two Lists, i.e. Lists I and II, of Seventh Schedule to the Constitu- tion, has been taken care of by the opening non obstenti clause of Art. 246(1) of the Constitution which gives Su- premacy of List I over List II/Laws made by Parliament in its residuary jurisdiction will be governed by the same provision because Art. 248 is to be read with Entry 97 of List I. Same is the position under Art. 252 of the Constitu- tion. Once Parliament has made a law under that Article on a matter in State List, the Legislatures of those States on whose resolution the law was passed by Parliament or which subsequently adopt it ceases to have a power to make a law relating to that matter, and, therefore, there is no ques- tion of retaining any legislative competence to make law on that matter. Same should De the position under Art. 253 of the Constitution. The position under temporary measures are, therefor dealt with by Art. 251 that in case of inconsisten- cy between the Union and State law, the former shall prevail and the latter will be only 'inoperative' but not 'null and void'. Under Arts. 252 and 253, the loss of legislative power of the States is complete and, thereafter, the States can no longer make any law on a subject on which Parliament has made a law and, therefore, their existing laws and any laws that they may venture to make in future will be null and void and for that matter Art. 254(1) cannot be invoked. But that is not the case with matter enumerated in the Concurrent List. The State Legislature did not surrenderated power or jurisdiction. The Parliament, with a view to lay down general principles makes law or amends the existing law. The State Legislature still may feel that its local conditions may demand amendment or modification of the Central law. Their reserve power is Art. 254(2). If the Parliament expressly repeals the repugnant law made under Art. 254(2) different considerations may arise for which no final pronouncement is needed here. It is already found that ss. 14(1) and 20(3) of the Acquisition Act (21 of 1976) became void. But after making the Act 59 of 1988, the power of the State Legislature under Art. 254(2) is not exhausted and is still available to be invoked from time to time Though, there is opposite school of juristic thought, in my considered view the interpretation I have but up will sub- serve the animation of the rounding fathers of the Constitu- tion; the Constitutional Scheme and purpose envisioned by Art. 254. Therefore, after the Act has come into force, the State legislature has its reserve power under Art. 254(2) to make law. But unless it again enacts law and reserves it for consideration and obtains the assent of the President afresh, there is no prohibition for the petitioners to make applications for the grant of contract carriage permits under the Act and consideration and grant or refusal thereof according to law by the concerned Regional Transport Author- ity. It is, therefore, made clear that this order does not preclude the Karnataka State Legislature to make afresh the law similar to ss. 14(1) and 20(3) of the Acquisition Act with appropriate phraseology and to obtain the assent of the President. The authorities have misconstrued the effect of the Act.

21. Accordingly I hold that s. 14(1) to the extent of prohibiting to make fresh application for grant of permits to run the contract carriages other than those acquired under Act 21 of 1976 (Acquisition Act) and the embargo and prohibition created under s. 20(3) thereof on the respective Regional Transport Authority in the State of Karnataka to invite/receive the application to consider the grant of permits to such contract carriages according to law, are hereby, declared to be void.

22. The writ petitions are accordingly allowed, but, in the circumstances, without costs.

P.S.S. Petitions dismissed.