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August 16

STATE OF ORISSA

v.

M. A. TULLOCH AND CO.

(AND CONNECTED APPEAL)

(B. P. SINHA C. J., K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Constitution of India—State legislation under Seventh Schedule, List II, entry 23—Union Legislation under List I, entry 54—Effect of Union legislation—General Clauses Act, s. 6, meaning of 'repeal'—Orissa Mining Areas Development Fund Act, 1952 (*XXVII of* 1952), *ss.* 4, 5—*Mines and Minerals (Regulation and Development) Act,* 1957 (67 *of* 1957), *s.* 18(1)(2)—*General Clauses Act,* 1897 (10 *of* 1897) *s.* 6—*Constitution of India, Art.* 246(1), *Seventh Schedule, List II, Entry* 23, *List I, Entry* 54.

On a lease granted by the appellant under the Central Act 53 of 1948 the Respondent Tulloch & Co. was working a manganese mine. The State Legislature of Orissa, then passed the Orissa Mining Areas Development Fund Act, 1952 whereunder the State Government was empowered to levy a fee being intended for the development of the "mining areas" in the State. After bringing these provisions into operation, the appellant made demands on the respondent on August 1, 1960 for payment of the fees due for the period July, 1957 to March, 1958. The respondent then, challenged the legality of the said demand before the High Court under Art. 226 of the Constitution. The writ petition was allowed on the ground that on the coming into force of the Central Act, 1957 (Act 67 of 1957), as and from June 1, 1958, the Orissa Act should be deemed to be non-existent for every purpose. Thereafter, the appellant made an application to the High Court to review its judgment on the ground that even if the Orissa Act of 1952 was superseded by Central Act 67 of 1957, the liabilities which had accrued to the State prior to June 1, 1958 could not be deemed to be wiped out because the Central Act was not retrospective. This application was dismissed. It was urged on behalf of the State, *inter alia,* that the supersession of the Orissa Act by the Central Act was neither more nor less than a repeal. If it thus was a repeal, then s. 6 of the General Clauses Act, 1897 was attracted.

Held, (1) that since the Central Act 67 of 1957 contains the requisite declaration by the Union Parliament under Entry 54 and that Act covers the same field as the Act of 1948 in regard to mines and mineral development, the decision of this Court in *Hingir-Rampur Coal Co.* v. *State of Orissa* concludes this matter unless there were any material difference between the scope and ambit of Central Act 53 of 1948 and that of the Act of 1957.

Besides, sub-ss. (1) and (2) of s. 18 of the Central Act of 1957 are wider in scope and amplitude and confer larger powers on the Central Government than the corresponding provisions of the Act of 1948;

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Hingir-Rampur Coal Co. Ltd. v. *State of Orissa,* [1961] 2 S. C. R. 537, followed.

(2) that the test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation.

In the present case, having regard to the terms of s. 18(1) it must be held that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession of the State Act;

Ch. Tika Ramji & Ors. v. *State of Uttar Pradesh.* [1956] S.C.R. 393, inapplicable.

(3) that if by reason of the declaration by Parliament the entire subject-matter of "conservation and development of minerals" has been taken over, for being dealt with by Parliament, thus depriving the State of the power within it theretofore possessed, it would follow that the "matter" in the State List is, to the extent of the declaration, subtraced from the scope and ambit of entry 23 of the State List. There would, therefore, after the Central Act of 1957, be "no matter in the List" to which the fee could be related in order to render it valid;

(4) that a repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation.

Where an intention to effect a repeal is attributed to a legislature then the same would attract the incident of the saving found in s. 6 of the General Clauses Act. If this were the true position about the effect of the Central Act, 67 of 1957 as the liability to pay the fee which was the subject of the notices of the demand had accrued prior to June 1, 1958 it would follow that these notices were valid and the amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act by virtue of the superior legislation by the Union Parliament.

Keshavan Madhava Menon v. *State of Bombay,* [1951] S.C.R. 228, *Kay* v. *Goodwin,* (1830) 6 *Bing.* 576, *Surtees* v. *Ellison,* (1829) 9 B & C 750 and *Trust Mai Lachmi Sialkoti Bradari* v. *The Chairman Amritsar Improvement Trust and Ors.* [1963] 1 S.C.R. 242, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeals No. 561 and 562 of 1962.

Appeals from the judgment and order dated April 18, 1961, of the Orissa High Court in O. J. Cs. Nos. 142 and 144 of 1960.

D. Narsaraju, Advocate-General for the State of Andhra Pradesh, Ramdas, R. N. Sachthey and *P. D. Menon,* for the appellants (in both the appeals).

M. C. Setalvad, Ranadeb Chaudhuri, B. C. Sen, S. C. Sen, S. N. Andley, Rameshwar Nath and *P. L. Vhora* for the respondent (in C. A. No. 561 of 1962).

Ranadeb Chaudhuri, B. C. Sen, S. C. Sen, S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for the respondent (in C. A. No. 562 of 1962).

P. Ram Reddy and *R. Thiagarajan,* for the Intervener.

August 16, 1963. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR J.—These two appeals which are against a common judgment of the High Court of Orissa have been filed pursuant to a certificate of fitness granted by the High Court under Art. 132(1) of the Constitution. They raise for consideration the question regarding the continued operation of the Orissa Mining Areas Development Fund Act (Orissa Act 27 of 1952) and the continued exigibility of the fees leviable from mine-owners under the said enactment.

Each of the respondents in the two appeals filed a petition before the High Court of Orissa under Art. 226 of the Constitution praying for the issue of a writ of mandamus restraining the two appellants—The State of Orissa and the Administrator, Orissa Mining Areas Development Fund, from applying the provisions of the Orissa Mining Areas Development Fund Act (Orissa Act 27 of 1952) to the respective respondents and to direct the two appellants to cancel the notices of demand requiring the petitioners to pay the fees assessed under the said Act issued by the second appellant and for an injuction etc. restraining them from taking any steps in pursuance of the said notice of demand.

The facts giving rise to these petitions were briefly these. There is not any material difference between the

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facts of the two cases and so it would be sufficient if we refer only to those in Civil Appeal 561 of 1962. The respondent Tulloch & Co. Private Ltd.—a company incorporated under the Indian Companies Act, works a manganese mine in the State of Orissa under a lease granted by that State under the provision of the Mines & Minerals (Development & Regulation) Act, 1948 (Central Act 53 of 1948) and the rules made thereunder. While the respondent was thus working these mines, the State Legislature of Orissa passed an Act called the Orissa Mining Areas Development Fund Act 1952 (which for shortness we shall refer to as the Orissa Act) whereunder certain areas were constituted as "mining areas" and under the powers conferred under that enactment the State Government was empowered to levy a fee on a percentage of the value of the mined ore at the pit's mouth, the collections being intended for the development of the "mining areas" in the State. The necessary steps for bringing these provisions into operation were taken by the State Government who thereafter made demands on the respondent on August 1, 1960 for the payment of the said fees. The present appeal is concerned with the fees which became due for the period July, 1957 to March 1958. When a demand was made for the sum the respondent filed petition 142 of 1960 before the High Court impugning the legality of the demand and claimed the reliefs we have set out earlier. The learned Judges allowed the Writ Petition and issued directions to the second appellant in terms of the prayer in the petition. As the grounds on which the said demand of the fees was impugned raised substantial questions touching the interpretation of the Constitution the appellants applied to the Court for a certificate of fitness under Art. 132(1) and (2) and this having been granted, the appeals are now before us.

We shall now proceed to set out briefly the grounds upon which the learned Judges of the High Court allowed the petition of the respondents. Stated shortly, the contention which the learned Judges of the High Court accepted was that the Orissa Act had been rendered ineffective or superseded by a Central enactment—The Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957), hereinafter called the Central Act, which was brought into force as and from June 1, 1953. The

Orissa Act had been enacted by virtue of the legislative power conferred by entry 23 of the State Legislative List reading "Regulation of mines and mineral development *subject to the provisions of List I with reference to regulation and development under the control of the Union.*" The legislative entry under which the later Central Act was enacted was item 54 of the Union List which ran "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest." The Central Act carried in its second section a declaration envisaged by the last words of the entry. Based on these facts the argument to which the learned Judges acceded was that on the coming into force of the Central Act the Orissa Act ceased to be operative by reason of the withdrawal of legislative competence by force of the entry in the State List being subject to the Parliamentary declaration and the law enacted by Parliament. They held that for this reason the Orissa Act should be deemed to be non-existent as and from June 1, 1958 for every purpose, with the consequence that there was lack of power to enforce and realise the demands for the payment of the fee at the time when the demands were issued and were sought to be enforced. It is the correctness of this judgment that is challenged by the State in these appeals.

Before proceeding further it is necessary to specify briefly the legislative power on the relevant topic, for it is on the precise wording of the entries in the 7th Schedule to the Constitution and the scope, purpose and effect of the State and the Central legislations which we have referred to earlier that the decision of the point turns. Article 246(1) reads:

> "Notwithstanding anything in cls. (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')",

and we are concerned in the present case with the State power in the State field. The relevant clause in that context is cl. (3) of the Article which runs :

> "Subject to clauses (1) and (2), the Legislature of any

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> State....has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List')."

Coming now to the Seventh Schedule, Entry 23 of the State List vests in the State Legislature power to enact laws on the subject of 'regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union'. It would be seen that "subject" to the provisions of List I the power of the State to enact Legislation on the topic of "mines and mineral development" is plenary. The relevant provision in List I is, as already noticed, Entry 54 of the Union List. It may be mentioned that this scheme of the distribution of legislative power between the Centre and the States is not new but is merely a continuation of the state of affairs which prevailed under the Government of India Act 1935 which included a provision on the lines of Entry 54 of the Union List which then bore the number item 36 of the Federal List and an entry corresponding to Entry 23 in the State List which bore the same number in the Provincial Legislative List. There is no controversy that the Central Act has been enacted by Parliament in exercise of the legislative power contained in Entry 54 or as regards the Central Act containing a declaration in terms of what is required by Entry 54 for it enactes by s. 2:

> "It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided".

It does not need much argument to realise that to the extent to which the Union Government had taken under "its control". "the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made.

It would, however, be apparent that the States would lose legislative competence only to the *"extent to which* regulation and development under the control of the Union has been declared by Parliament to be expedient in the Public interest." The crucial enquiry has therefore to be directed to ascertain this "extent" for beyond it the legislative power of the State remains unimpaired. As the legislation by the State is in the case before us the earlier one in point of time, it would be logical first to examine and analyse the State Act and determine its purpose, width and scope and the area of its operation and then consider to what "extent" the Central Act cuts into it or trenches on it.

The object of the Orissa Act, as disclosed by its preamble, was "the constitution of mining areas" and the creation of "a Mining Area Development Fund" in the State. Section 3 empowers the State Government to constitute and alter the limits of these "mining areas". The object of the Constitution of these "mining areas" was *inter alia* the provision of amenities like communications, water-supply and electricity and "the better development of areas wherein any mine was situated" as well as "to provide for the welfare of the residents or workers in any such area within which persons employed in a mine or group of mines reside or work". Section 4 is the provision empowering the State Government to levy a cess or a fee on all extracted minerals from any mines in "a mining area" with a limit, however, that the rate of such levy should not exceed 5 per cent of the value of the minerals at the pit's mouth. The cess was to fall due quarterly every year on 1st of January etc. and was to be computed on the value of the mineral extracted during the three months immediately preceding the dates specified. Section 5 makes provision for the constitution of the "Development Fund" into which the cesses raised under s. 4 and other moneys received in that behalf might be paid and the section also specifies the purposes for which the Fund may be utilised. These were :

> "5 (5). Without prejudice to the generality of the foregoing provisions, the fund may be utilised to defray—
> (a) the cost of measures for the benefit of labour and other persons residing or working in the mining areas directed towards:—

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(i) the improvement of public health and sanitation, the prevention of disease, and the provision and improvement of medical facilities;
(ii) the provision and improvement of water-supplies and facilities for washing;
(iii) the provision and improvement of educational facilities;
(iv) the improvement of standards of living including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities, and
(v) the provision of roads, tramways and railways and such other communications;

(b) the grant to any educational Institute providing technical education in mining and such other allied subjects;
(c) the grant to the Central Government, a local authority or the owner, agent or manager of a mine, in aid of any scheme approved by the State Government for any of the purposes of the Fund;
(d) the cost of administering the Fund, including the allowances, if any, of members of the Advisory Committee constituted under section 6 and the salaries, provident funds, pensions, gratuity and allowances, if any, of officers appointed under section 7; and
(e) any other expenditure which the State Government may direct to be defrayed from the Fund."

The other sections which follow are not relevant and so are omitted.

We shall now turn to the Central Act. The long title of the Act specifies that the twin purposes of the Act are: (1) the Regulation of mines, and (2) the development of minerals, both under the control of the Union. Section 2 we have already extracted. Section 3 contains definitions of terms used in the Act and thus may be omitted. Sections 4 to 10 form a group headed 'General Restrictions on Undertaking Prospecting and Mining Operations' and relate to the rules and regulations under which prospecting licences and mining leases might be granted, the period for which they may be granted or renewed, the royalties and fees that would be payable on them etc. The next group consists

of three sections—ss. 10 to 12—dealing with the procedure for obtaining prospecting licences or mining leases in respect of land in which minerals vest in the Government. Sections 13 to 17 are grouped under a caption which reads:

> "Rules for regulating the grant of Prospecting Licences and Mining Leases".

Section 13 with which this group starts empowers the Central Government, by notification, to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Sub-s. (2) specifies in particular the matters for which such rules may provide and among them is head (i) reading :

> "(i) The fixing and collection of dead rent, fines, fees or other charges and the collection of royalties in respect of—
> (i) prospecting licences,
> (ii) mining leases,
> (iii) minerals mined, quarried, excavated or collected".

Head (m) runs:

> "(m) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passages for water for mining purposes on any land comprised in a mining lease ;"

Up to this point the Act was dealing with the first purpose *viz.*, "the Regulation of mines." Section 18 is the provision relating to the other object of the Act "The Development of minerals." It would be necessary to set out in some detail some of the terms of this section. Section 18(1) enacts:

> "18 (1). It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India, and for that purpose the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit."

and 18(2):

> "18 (2). In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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(a) .....
(b) .....
(c) .....
(d) the development of mineral resources in any area;
.....

Section 25 provides for the recovery of any rent, royalty, tax or other sum due to the Government under this Act or the rules made thereunder, and these are to be recovered in the same manner as an arrear of land revenue.

The question for consideration is whether "the extent of control and regulation" provided by the Central Act takes within its fold the area or the subject covered by the Orissa Act.

Learned Counsel for the appellant raised 4 points: (1) that the object and purposes of the Orissa Act and its provisions were quite distinct and different from the object and purposes of the Central Act, with the result that the two enactments could validly co-exist since they do not cover the same field. It was argued that the Orissa Act was concerned with the raising of a fund for providing amenities to labour and other residents in "mining areas" while the Central Act was concerned not with any social purpose, as the Orissa Act, but merely with the development of the mineral resources of the country. The object to be attained by the two enactments being so dissimilar there was no common area covered by the two enactments and the "extent of control" which the Union assumed by its law was therefore entirely outside the field occupied by the State Act and there being thus no encroachment the State Act continued to operate in full force. (2) Even if the Central Act might cover the same field in the sense that it would be competent to the Central Government to make rules under the Central Act for the same purposes as the Orissa Act, and the rules when made would overlap the provisions of the Orissa Act, still there was no repugnance between the Central Act and the Orissa Act until such rules were made for until then there is no effective and operative Central legislation covering the field occupied by the Orissa Act. (3) The power to enact legislation to levy "fees" was an independent head of Legislative power under the Constitution under item 96 in the Union list and item 66 in the State List and therefore there was

no question of the supersession of the State power under item 66 of the State List by a Central enactment whose source of legislative power is entry 96 of List I and therefore the demand for the fee competently enacted by the State was not superseded by Central legislation even though the latter was covered by Entry 54 of the Union List. (4) In any event, the Central Act was not retrospective or retroactive and could not affect rights which accrued to the State prior to June 1, 1958 on which date the Central Act was brought into force. The fees in regard to which the demands impugned in the case were made had accrued long prior to June 1, 1958 and the demands would therefore be enforceable notwithstanding the disappearance of the State Act subsequent to the date of the accrual of the fee.

On the other hand, Mr. Setalvad—learned Counsel for the respondent—urged that the Central Act covered the entire field of mineral development, that being the "extent" to which Parliament had declared by law that it was expedient that the Union should assume control. In this connection he relied most strongly on the terms of s. 18(1) which laid a duty upon the Central Government "to take all such steps as may be necessary for the conservation *and development of minerals* in India" and "for that purpose the Central Government may, by notification, make such rules as it deems fit". If the entire field of mineral development was taken over, that would include the provision of amenities to workmen employed in the mines which was necessary in order to stimulate or maintain the working of mines. The test which he suggested was whether if under the power conferred by s. 18(1) of the Central Act, the Central Government had made rules providing for the amenities for which provision was made by the Orissa Act and if the Central Government had imposed a fee to defray the expenses of the provision of these amenities, would such rules be held to be *ultra vires* of the Central Government, and this particularly when taken in conjunction with the matters for which rules could be made under s. 13 to which reference has already been made. We consider there is considerable force in this submission of learned Counsel for the respondent, and this would require very detailed and careful scrutiny. We are, however, relieved from this

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task of detailed examination and discussion of this matter because we consider that it is concluded by a decision of this Court in *The Hingir-Rampur Coal Co. Ltd. & Ors.* v. *The State of Orissa and Ors.*(1). There, as here, it was the validity of the demand of the fee under the Orissa Act now under consideration that was the subject of debate. The appellants then before this Court challenged on various grounds the constitutional validity of the Orissa Act and the rules made thereunder which empowered the State to levy the cess. One of the grounds urged before the Court was that the Orissa Act was void because the entire range of mineral development had been taken under Central control by the Mines and Minerals (Regulation & Development) Act, 1948 (Central Act 53 of 1948). The Central Act of 1948 was a pre-constitution law, but the contention raised was that the declaration in the Central enactment that it "was expedient in the public interest that the Central Government should take under its control etc." in terms of entry 36 of the Federal List under the Government of India Act, 1935 was tantamount to a declaration by law by Parliament of assumption of "control by the Union" within Entry 54 of List I of the 7th Schedule to the Constitution.

Before referring to the portion of the judgment dealing with this aspect of the matter, it would be convenient to refer to the Central Act of 1948 on the basis of which the constitutional validity of the Orissa Act was impugned. Central Act 53 of 1948 professes to be an Act to provide for the regulation of mines and oil fields and for the development of minerals. Section 2 of that Act contained a declaration as we have in s. 2 of the present Central Act 67 of 1957 and this read:

> "It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oil fields and the development of mines to the extent hereinafter provided".

It is a very short enactment consisting only of 14 sections of which it is only necessary to mention s. 6 which is headed "Power to make Rules as respects mineral deve-

(1) [1961] 2 S.C.R. 537.

lopment" and this empowers the Central Government by notification to make rules for "the conservation and development of minerals." By amendments effected in Central Act 53 of 1948, by the later Act 67 of 1957, the provisions which related to "mines and minerals" and their development and the references to "mines and minerals" in provisions common to them and to oil fields were excised, so that thereafter while the earlier Act of 1948 was limited to the development of oil-fields, the entire range of the law relating to mines and mineral development was taken over and covered by Central Act 67 of 1957. Now, it was the existence of this enactment of 1948 when it applied to mines and mineral development and before it was amended by Act 67 of 1957 by confining it to oilfields, with the declaration which is contained that it was expedient to "control mineral development to the extent provided" that was urged as having deprived the Orissa State Legislature of competence to enact the Orissa Act. Dealing with this ground of challenge Gajendragadkar, J. speaking for the Court observed:

> "Its validity (the demand of the fee under the Orissa Act) is still open to challenge because the legislative competence of the State Legislature under Entry 23 is subject to the provisions of List I with respect to regulation and development under the control of the Union; and that takes us to Entry I..... The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be *ultra vires,* not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The Limitation imposed by the latter part of Entry 23 is a limitation on the legislative compe-

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tence of the State Legislature itself. This position is not in dispute.

It is urged by Mr. Amin that the field covered by the impugned Act has already been covered by the Mines and Minerals (Regulation and Development) Act, 1948, (LIII of 1948) and he contends that in view of the declaration made by s. 2 of this Act the impugned Act is *ultra vires*..... Section 2 of the Act contains a declaration as to the expediency and control by the Central Government. It reads thus: '..... .....' Section 4 of the Act provides that no mining lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act. Section 5 empowers the Central Government to make rules by notification for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area ..... Section 6 of the Act, however, empowers the Central Government to make rules by notification in the official gazette for the conservation and development of minerals. Section 6(2) lays down several matters in respect of which rules can be framed by the Central Government..... It is true that no rules have in fact been framed by the Central Government in regard to the levy and collection of any fees; but, in our opinion, that would not make any difference. If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be com-

petent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the Legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948."

It is only necessary to add that the validty of this impost was affirmed, however, for the reason that whereas the Orissa Act was a post-Constitution enactment, the Central Act of 1948 was a pre-Constitution law and as in terms of Entry 54 "Parliament" had not made the requisite declaration, but only the previously existing Central Legislature, it was held not to be within the terms of Entry 54 and the State enactment was held to continue to be operative.

Since the Central Act 67 of 1957 contains the requisite declaration by the Union Parliament under Entry 54 and that Act covers the same field as the Act of 1948 in regard to mines and mineral development, we consider that the decision of this Court concludes this matter unless there were any material difference between the scope and ambit of Central Act 53 of 1948 and that of the Act of 1957. Learned Counsel for the appellant was not able to point to any matter of substance in which there is any difference between the two enactments. It was suggested that whereas s. 6 of the Act of 1948 empowered rules to be made for taxes being levied, there was no specific power to impose taxes under that of 1957. It is not necessary to discuss the materiality of this point because what we are concerned with is the power to levy a fee, and there is express provision therefor in s. 13 of the Central Act of 1957 apart from the implication arising from s. 25 thereof, which runs:

"25. Any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any pros-

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pecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue."

We ought to add that besides we see considerable force in Mr. Setalvad's submission that sub-ss (1) & (2) of s. 18 of the Central Act of 1957 are wider in scope and amplitude and confer larger powers on the Central Government than the corresponding provisions of the Act of 1948.

The second point urged by the appellant is based on the fact that s. 18(1) of the Central Act merely lays a duty on the Central Government "to take steps" for ensuring the conservation and development of the mineral resources of the country and in that sense is not self-acting. The submission is that even assuming that under the powers conferred thereunder read in conjunction with s. 13 and the other provisions in the Act, it would be competent for the Central Government to frame rules on the lines of the Orissa Act *i.e.,* for the development of "mining areas" and for that purpose to provide for the imposition of fees and for the constitution of a fund made up of these monies, still no such rules had been framed and until such rules were made or such steps taken, the Central Act would not cover the field so that the Orissa Act would continue to operate in full force. In support of this submission reliance was placed on the decision of this Court in *Ch. Tika Ramji & Ors. etc.* v. *The State of Uttar Pradesh & Ors.*(1) and in particular on a passage at p. 432 reading :

> "Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of section 18-G of Act LXV of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under section 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise."

(1) [1956] S.C.R. 393.

We consider that this submission in relation to the Act before us is without force besides being based on a misapprehension of the true legal position. In the first place the point is concluded by the earlier decision of this Court in *The Hingir-Rampur Coal Co. Ltd. & Ors.* v. *The State of Orissa and Ors.*(1) where this Court said :

> "In order that the declaration should be effective it is not necessary that rules should be made or enforced ; all that this required is a declaration by Parliament that it was expedient in the public interest to take the regulation of development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not."

But even if the matter was *res integra,* the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of s. 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession of the State Act.

It was next urged that under the scheme of the legislative entries under the Constitution, as previously under the Government of India Act, 1935, the power to levy a fee was an independent head of legislative power under

(1) [1961] 2 S.C.R. 537.

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each of the three legislative Lists and not merely an incidental power flowing from the grant of power over the subject-matter in the other entries in the List. From this it was sought to be established that even if the Union could levy a fee under the Central Act it would not affect or invalidate a State legislation imposing a fee for a similar service. This argument again proceeds on a fallacy. It is, no doubt, true that technically speaking the power to levy a fee is under the entries in the three lists treated as a subject-matter of an independent grant of legislative power, but whether it is an incidental power related to a legislative head or an independent legislative power it is beyond dispute that in order that a fee may validly be imposed the subject-matter or the main head of legislation in connection with which the fee is imposed is within legislative power. The material words of the Entries are: "Fees in *respect of any of the matters in this List*". It is, therefore, a prerequisite for the valid imposition of a fee that it is in respect of a "matter in the list". If by reason of the declaration by Parliament the entire subject-matter of "conservation and development of minerals" has been taken over, for being dealt with by Parliament, thus depriving the State of the power which it theretofore possessed, it would follow that the "matter" in the State List is, to the extent of the declaration, subtracted from the scope and ambit of Entry 23 of the State List. There would, therefore, after the Central Act of 1957, be "no matter in the List" to which the fee could be related in order to render it valid.

Lastly, it was urged that the fees, recovery of which was being sought by the State were those which had accrued prior to June 1, 1958 and as the Central Act was not retrospective it could not have operation so as to invalidate the demands for the payment of the fee made on the respondents. It was pointed out that s. 4 of the Orissa Act imposed a charge on the mine owners for the payment of the fee. The liability to pay the fee accrued quarterly and we are concerned in this appeal with the fee due in respect of six quarters from September 30, 1956 to March 31, 1958. The demands for the fee due for these quarters was served on the respondents on August 1, 1960. It was therefore submitted that even on the footing that the Orissa

Act stood repealed, superseded or nullified on the enactment of the Central Act, the right to recover the past arrears of fees which had accrued due previous to the repeal or nullification would not be abrogated.

Pausing here it is necessary to mention that after the judgment was delivered by the High Court in the two petitions which are the subject of these two appeals before us, setting aside even the notice of demand, applications were made by the State Government to the High Court to review its judgment. The ground urged was that even on the footing that the Orissa Act of 1952 was superseded by Central Act 67 of 1957, the liabilities which had accrued to the State prior to June 1, 1958 could not be deemed to be wiped out because the Central Act was not retrospective and that the Court should modify its orders accordingly. The learned Judges, however, dismissed the applications for two reasons: (1) They had already granted certificates of fitness under Art. 132 of the Constitution and among the grounds raised by the State in its memoranda of appeal was this point about the effect of the Central Act on the continued enforceability of the dues and thus the point was pending consideration by this Court. (2) It had already been held by this Court in a decision in *Keshavan Madhava Menon* v. *The State of Bombay*(1) to which we shall make reference, that when an earlier Act is superseded or rendered null under Art. 13 of the Constitution, nothing done under the old Act would survive except in respect of past and closed transactions, and the present case was thus covered.

We shall now turn to the arguments urged before us in support of this contention. Learned Counsel for the State submitted that the supersession of the Orissa Act by the Central Act was neither more nor less than a repeal. If it thus was repeal, then s. 6 of the General Clauses Act 1897 was attracted. Section 6 reads :—

> "6. Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not—
>
> (a) .....

(1) [1951] S.C.R. 228.

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(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) .....

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced.....as if the repealing Act or Regulation had not been passed",

and the argument on the interpretation of this section was two-fold: (1) that the word 'repeal' used in the opening paragraph was not confined to express repeals but that the word was comprehensive enough to include cases of implied repeals; (2) Alternatively it was submitted that even if the expression 'repeal' in s. 6 be understood as being confined to express repeals, still the principle underlying s. 6 was of general application and capable of being attracted to cases of implied repeals also.

Before proceeding further it will be convenient to clear the ground by adverting to two matters: (1) The effect of a Central Act under its exclusive legislative power which covers the field of an earlier State Act which was competent and valid when enacted is not open to doubt. The Parliamentary enactment supersedes the State law and thus it virtually effects a repeal (2) The effect in law of a repeal, if it is not subject to a saving as is found in s. 6 of the General Clauses Act is also not a matter of controversy. Tindal, C.J. stated this in *Kay* v. *Goodwin*(1):

> "I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law".

(1) [1830], 6 Bing. 576 at p. 582.

It was the same idea that was expressed by Lord Tenterden in *Surtees* v. *Ellison*(1) :

> "It has long been established that, when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed".

This laid down the law as it was prior to the U.K. Interpretation Act, 1890 which by s. 38(2) made provision for a saving of the type we now have in s. 6 of the Indian General Clauses Act, 1897 which we have extracted earlier. The submission of Mr. Setalvad—learned Counsel for the respondent—was very simple. He said that s. 6 on its terms applied only to express repeals. Here we have a case not of an express repeal but of the supersession of a State enactment by a law having by the Constitution superior efficacy. It would, therefore, be a mere disapperrance or supersession of the State enactment or at the best a case of an implied repeal. In this connection he invited our attention to some observations to be found in the decision of this Court in *Keshavan Madhava Menon* v. *The State of Bombay*(2) already referred to. The Court was there concerned with the legality of the prosecution of the appellant for contravention of the Indian Press (Emergency Powers) Act, 1931. The offence had been committed before the Constitution came into force and a prosecution launched earlier was pending after January 26, 1950. The enactment which created the offence was held to be void under Art. 19(1)(a) read with Art. 13 as being inconsistent with one of the Fundamental rights guaranteed by Part III of the Constitution. In the circumstances, the point that was debated before this Court was whether the prosecution could be continued after the enactment became void. The majority of the Court held that the Constitution was prospective in its operation and that Art. 13(1) would not affect the validity of proceedings commenced under pre-Constitution laws which were valid up to the date of the Constitution coming into force, for to hold that the validity of these proceedings were affected would in effect be treating the Constitution as retrospective. They therefore considered that there was no legal objection to the prosecution continuing. Fazl Ali, J. who dissented

(1) [1829] 9 B. & C. 750 at 752. (2) [1951] S.C.R. 228.

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from the majority, after discussing the legel effect of a repealing statute in the absence of a saving clause and the history of the provision in regard to the matter in the successive General Clauses Acts in India, observed:

> "The position therefore now in India as well as in England is that a repeal has not the drastic effect which it used to have before the enactment of the Interpretation Act in England or the General Clauses Act in this country. But this is due entirely to the fact that an express provision has been made in those enactments to counteract that effect. Hence, in those cases which are not covered by the language of the General Clauses Act, the principle already enunciated [*Kay* v. *Goodwin*(1) and *Surtees* v. *Ellison*(2)] will continue to operate. The learned Attorney General had to concede that it was doubtful whether section 6 of that Act is applicable where there is a repeal by implication, and there can be no doubt that the law as to the effect of the expiry of a temporary statute still remains as stated in the books, because section 6 of the General Clauses Act and section 38(2) of the Interpretation Act have no application except where an Act is repealed".

Mr. Setalvad submitted that this was an express decision on the point in his favour. We are, however, not disposed to agree with the submission apart from its being the basis of a dissenting judgment. We might add that this point as to the effect of an implied repeal has arisen in a few other cases before this Court but it has been left open [see for instance, the judgment in *Trust Mai Lachhmi Sialkoti Bradari* v. *The Chairman, Amritsar Improvement Trust and Ors.*(3)]. The question is *res integra* and has to be decided on principle.

We must at the outset point out that there is a difference in principle between the effect of an expiry of a temporary statute and a repeal by a later enactment and the discussion now is confined to cases of the repeal of a statute which until the date of the repeal continues in force. The first question to be considered is the meaning of the expression 'repeal' in s. 6 of the General Clauses Act—whether it is confined to cases of express repeal or whether the

(1) [1830] 6 Bing. 576. (2) [1819] 9 B. & C. 750.
(3) [1963] 1 S.C.R. 242.

expression is of sufficient amplitude to cover cases of implied repeals. In this connection there is a passage in *Craies on Statute Law*, Fifth Edition at pages 323 and 324 which appears to suggest that the provisions of the corresponding s. 38 of the English Interpretation Act were confined to express repeals. On page 323 occurs the following :

> "In Acts passed in or since 1890 certain savings are implied by statute in all cases of express repeal, unless a contrary intention appears in the repealing Act",

and on the next page:

> "It had been usual before 1889 to insert provisions to the effect above stated in all Acts by which express repeals were effected. The result of this enactment is to make into a general rule what had been a common statutory form, and to substitute a general statutory presumption as to the effect of an express repeal for the canons of construction hitherto adopted."

There is, however, no express decision either in England or, so far as we have been able to ascertain, in the United States on this point. Untramelled, as we are, by authority, we have to inquire the principle on which the saving clause in s. 6 is based. It is manifest that the principle underlying it is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications—express or implied—in the later enactment designed to completely obliterate the earlier state of the law. The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the

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earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which s. 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in s. 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted. If this were the true position about the effect of the Central Act 67 of 1957 as the liability to pay the fee which was the subject of the notices of the demand had accrued prior to June 1, 1958 it would follow that these notices were valid and the amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act by virtue of the superior legislation by the Union Parliament.

The appeals would, therefore, be allowed and the Writ Petitions would stand dismissed. As the appellants have failed in their main submissions, we make no order as to costs.

Appeals allowed.