State Of M.P vs Kedia Leather & Liquor Ltd. & Ors on 19 August, 2003

Bench: Doraiswamy Raju, Arijit Pasayat.

CASE NO.:

Appeal (crl.) 151-158 of 1996

PETITIONER:

State of M.P.

RESPONDENT:

Vs.

Kedia Leather & Liquor Ltd. & Ors.

DATE OF JUDGMENT: 19/08/2003

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

View expressed by High Court of Madhya Pradesh, Jabalpur Bench at Indore holding that after introduction of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the 'Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Air Act'), there was implied repeal of Section 133 of the Code of Criminal Procedure, 1973 (in short the 'Code'), is questioned in these appeals.

Factual background needs to be noted in brief as legal issues of pristine nature are involved. The Sub-Divisional Magistrate (hereinafter referred to as the 'SDM')of the area concerned served orders in terms of Section 133 of the Code directing the respondents who owned industrial units to close their industries on the allegation that serious pollution was created by discharge of effluent from their respective factories and thereby a public nuisance was caused. The preliminary issues and the proceedings initiated by the SDM were questioned by the respondents herein before the High Court under Section 397 of the Code.

The main plank of their arguments before the High Court was that by enactment of Water Act and the Air Act there was implied repeal of Section 133 of the Code.

The plea was contested by the SDM on the ground that the provisions of Water Act and the Air Actoperate in different fields, and, therefore, the question of Section 133 of the Code getting eclipsed did not arise.

The High Court referred to various provisions of the Water Act and Air Act and compared their scope of operation with Section 133 of the Code.

The High Court was of the view that the provisions of the Water and the Air Acts are in essence elaboration and enlargement of the powers conferred under Section 133 of the Code. Water and Air pollution were held to be species of nuisance or of the conduct of trades or occupation injuries to the health or physical comfort to the community. As they deal with special types of nuisance, they ruled out operation of Section 133 of the Code. It was concluded that existence and working of the two parallel provisions would result not only in inconvenience but also absurd results. In the ultimate, it was held that the provisions of the Water and Air Acts impliedly repealed the provisions of Section 133of the Code, so far as allegations of public nuisance by air and water pollution by industries or persons covered by the two Acts are concerned. As a consequence, it was held that the SDM had no jurisdiction to act under Section 133 of the Code.

Learned counsel for the appellant-State submitted that the view expressed by the High Court is not legally tenable. The three statutes operate in different fields and even though there may be some amount of over-lapping, they can co-exist. A statutory provision cannot be held to have been repealed impliedly by the Court. Learned counsel for the respondents-units submitted that this Court had occasion to pass interim orders on 2.1.2001. Exception was taken to the manner of functioning of the Madhya Pradesh Pollution Control Board (in short the 'Board') and directions were given to take necessary action against the delinquent officials. Proceedings were initiated and on the basis of the reports filed by the functionaries of the reconstituted Board, functioning of the factories had been discontinued. The legality of the proceedings and the orders passed therein have been questioned and the Board has been moved for grant of necessary permission for making the factories functional. In this background it is submitted that the issues raised have really become academic. Though, learned counsel for the appellant-State and the Board accepted the position to be factually true, it is submitted that considering the impact of the decision which would have far reaching consequences, the legal issues may be decided and appropriate directions should be given so far as the functioning or closure of the factories aspect is concerned.

Section 133 of the Code appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading 'public nuisance'. The term 'nuisance' as used in law is not a term capable of exact definition and it has been pointed out in Halsbury's Laws of England that "even at the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort". In Vasant Manga Nikumba and Ors. v. Baburao Bhikanna Naidu (deceased) by Lrs. and Anr. (1995 Supp.(4) SCC

54) it was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisance, and on the other hand applies when the nuisance is in existence. It has to be noted that some times there is a confusion between Section

133 and Section 144 of the Code. While the latter is more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. The proceedings are more in the nature of civil proceedings than criminal proceedings. One significant factor to be noticed is that person against whom action is taken is not an accused within the meaning of Section 133 of the Code. He can give evidence on his own behalf and may be examined on oath. Proceedings are not the proceedings in respect of offences. The Water Act and the Air Act are characteristically special statutes. The two statutes relate to prevention and control of pollution and also provides for penal consequences in case of breach of statutory provisions. Environmental, ecological air and water pollution amount to violation of right to life assured by Article 21 of the Constitution of India, 1950 (in short 'the Constitution'). Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment. Chapter V of the Water Act deals with prevention and control of water pollution. Similarly, Chapter IV of the Air Act deals with prevention and control of air pollution. Sections 30, 32and 33 of the Water Act deal with power of the State Board to carry out certain works, emergency measures in certain cases and power of Board to make application to the Courts for restraining apprehended pollution respectively. Under Sections 18, 20 and 22-A of the Air Act deal with power to give directions, power to give instructions for ensuring standards and power of Board to make application to Court for restraining persons from causing air pollution respectively. The provisions of Section 133 of the Code can be culled in aid to remove public nuisance caused by effluent of the discharge and air discharge causing hardship to the general public. To that extent, learned counsel for the appellant is correct in his submission. There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation. (See: Municipal Council, Palai through the Commissioner of Municipal Council, Palai v. T.J. Joseph (AIR 1963 SC 1561), Northern India Caterers (Private) Ltd. and Anr. v. State of Punjab and Anr. (AIR 1967 SC 1581), Municipal Corporation of Delhi v. Shiv Shanker (1971 (1) SCC 442) and Ratan Lal Adukia and Anr. v. Union of India (AIR 1990 SC

104). When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle expressio unius (persone vel rei) est exclusio alterius. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in Garnett v. Bradley (1878) 3 AC 944 (HL). The continuance of existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act and that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. (See: A.G. v. Moore (1878) 3 Ex. D 276, Ratanlal's case (supra) and R.S. Raghunath v. State of Karnataka and Anr. (AIR 1992 SC 81).

The necessary questions to be asked are:

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

(See: Pt. Rishikesh and Anr. v. Salma Begum (Smt.) (1995(4) SCC

718), and Shri A.B. Krishna & Ors. v. The State of Karnataka & Ors. (JT 1998(1) SC 613) The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law,

did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The Court leans against implying a repeal, "unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together." (See Craies on Statute Law, Seventh Edition, page 366, with reference to Re: Berrey (1936) Ch. 274). To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects; and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side.

While as noted above the provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise. Above being the position, the High Court was not justified in holding that there was any implied repeal of Section 133 of the Code. The appeals deserve to be allowed to the extent indicated above, which we direct.

However, if applications are pending before the Board, it would be appropriate for the Board to take necessary steps for their disposal. The question whether there was no infraction under Section 133 of the Code or the two Acts is a matter which shall be dealt with by the appropriate forum, and we do not express any opinion in that regard.